

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VERIDIAN CREDIT UNION, on behalf of itself  
and a class of similarly situated financial  
institutions,

Plaintiff,

v.

EDDIE BAUER LLC,

Defendant.

NO. 2:17-cv-00356-JLR

**DECLARATION OF GARY F.  
LYNCH IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

1 I, Gary F. Lynch, pursuant to 28 U.S.C. § 1746, declare as follows, declare as follows:

2 1. I am an attorney licensed in Pennsylvania and New York, and have been admitted  
3 to practice before the Supreme Court of the United States and numerous federal appellate and  
4 district courts, including this Court, *pro hac vice*. I have been involved in all aspects of this  
5 litigation since inception. I submit this Declaration in support of Plaintiff's Unopposed Motion  
6 for Preliminary Approval of Class Action Settlement.<sup>1</sup> The information set forth in this  
7 Declaration is based upon my personal knowledge.

8 2. I am a founding member of the law firm Carlson Lynch, LLP.

9 3. Carlson Lynch was founded in 2004 as Carlson Lynch LTD. The firm was  
10 restructured and renamed Carlson Lynch Sweet & Kilpela, LLP in 2014. An additional named  
11 partner was added in 2016 and the firm was renamed Carlson Lynch Sweet Kilpela & Carpenter,  
12 LLP. The name was shortened to Carlson Lynch, LLP in 2019.

13 4. Prior to my involvement in my current firm, I was a partner at Lynch & Kunkel  
14 LLP and Gary F. Lynch, P.C. I began my legal career as an associate at Reed Smith, LLP  
15 (formerly Reed Smith Shaw & McClay) in 1989, after graduating from the University of  
16 Pittsburgh School of Law.

17 5. Throughout my career (since leaving Reed Smith), my law practice has focused  
18 on representing plaintiffs in complex civil litigation. For the last several years, I have spent the  
19 bulk of my professional time representing individual and institutional plaintiffs in class action  
20 and multi-district litigation throughout the country and am currently serving or have served as  
21 lead, co-lead, or in other leadership positions in numerous federal and state class actions and  
22 multi-district proceedings, including: *In re Equifax, Inc. Customer Data Security Breach Litig.*,  
23 MDL 2800 (N.D. Ga.) (appointed co-lead MDL counsel on behalf of financial institution  
24 plaintiffs); *In re Home Depot Data Breach Litigation*, 1:14-md-2583 (N.D. Ga.) (appointed co-

25  
26  
27 <sup>1</sup> All Capitalized terms not defined herein have the same meaning as those defined in the Settlement Agreement and Release

1 lead MDL counsel on behalf of financial institution plaintiffs); *In re Target Stores Data Breach*  
 2 *Litigation*, 0:14-md-02522 (D. Minn.) (appointed to overall executive committee in a large  
 3 consolidated MDL stemming from the retailer's 2013 data breach, final approval granted to two  
 4 settlements); *Dittman et al v. UPMC et al*, 196 A.3d 1096 (Pa. 2018) (Allegheny Cty., Pa. No.  
 5 GD-14-003285) (lead counsel on behalf of plaintiffs after obtaining reversal in the Pennsylvania  
 6 Supreme Court); and *In re FedLoan Student Loan Servicing Litigation*, 2:18-md-02833-CDJ  
 7 (E.D. Pa.) (appointed MDL co-lead counsel).

8           6. I make this Declaration in support of the proposed Settlement Agreement reached  
 9 between the parties after extensive arms-length negotiation, a true and accurate copy of which is  
 10 being filed concurrently herewith. Based upon my experience serving as lead counsel and in other  
 11 leadership positions in class action litigation, it is my opinion that the proposed settlement in this  
 12 case is fair, adequate, and reasonable so as to satisfy the requirements for preliminary and,  
 13 ultimately, final approval pursuant to Fed. R. Civ. P. 23. This opinion is shared by Joseph P.  
 14 Guglielmo of Scott+Scott Attorneys at Law, LLP, who serves as co-counsel for the Plaintiff. As  
 15 part of the settlement approval process, Plaintiff is requesting appointment of Mr. Guglielmo and  
 16 me as Class Counsel.

17           7. The complaint was filed by Plaintiff Veridian Credit Union on March 7, 2017 and  
 18 alleged claims of negligence, violations of the Washington Consumer Protection Act ("CPA")  
 19 and the data breach notification law, Wash. Rev. Code ("RCW") § 19.255.020, and for  
 20 declaratory and injunctive relief.

21           8. On June 15, 2017, Eddie Bauer moved to dismiss the Complaint (the "Motion to  
 22 Dismiss"). (ECF No. 40). On July 24, 2017, Veridian filed its opposition to the Motion to  
 23 Dismiss. (ECF No. 53). On November 9, 2017, the Court denied Eddie Bauer's Motion to  
 24 Dismiss ("Order"). (ECF No. 69). On November 27, 2017, Plaintiff filed its Second Amended  
 25 Class Action Complaint to conform to the Court's Order. (ECF No. 70).

1           9.       Thereafter, the Parties engaged in significant motion practice and discovery.  
 2 Plaintiff served Eddie Bauer with document requests, and Eddie Bauer produced hundreds of  
 3 thousands of pages of documents, which Plaintiff's counsel reviewed. Plaintiff also deposed  
 4 Eddie Bauer's corporate representatives pursuant to Federal Rule of Civil Procedure 30(b)(6) and  
 5 deposed nine party and non-party fact witnesses. Plaintiff obtained and reviewed tens of  
 6 thousands of pages of documents from numerous third parties in response to subpoenas Plaintiff  
 7 served, including subpoenas served on the major card brands and obtained numerous documents  
 8 from those third parties. Eddie Bauer served Plaintiff with 164 document requests, to which  
 9 Veridian responded with the production of thousands of pages of responsive documents. Eddie  
 10 Bauer also deposed Veridian's corporate representative pursuant to Federal Rule of Civil  
 11 Procedure 30(b)(6).

12           10.       The proposed Settlement Agreement is the result of good faith, arm's-length  
 13 negotiations. During the course of the litigation, the Parties engaged in multiple direct discussions  
 14 about possible resolution. The Parties then participated in a full-day, in-person mediation session  
 15 before Hon. Jay C. Gandhi (Ret.) on February 15, 2019 in Los Angeles. At the mediation, the  
 16 parties were able to reach agreement on the core terms necessary to resolve the case on a class-  
 17 wide basis. The parties then formalized the terms of their proposed settlement in a full settlement  
 18 agreement, which is attached as Exhibit A to this Declaration.

19           11.       The Parties did not discuss with one another, or agree upon, attorneys' fees, costs,  
 20 and expenses until after agreeing to the essential terms of the Settlement.

21           12.       Under the Settlement Agreement, Eddie Bauer agrees to pay class members a  
 22 minimum total of \$1 million and a maximum total of \$2.8 million. Additionally, Eddie Bauer  
 23 will pay up to \$2 million total to cover the costs of settlement administration, any Court-approved  
 24 service award to the Plaintiff, and any Court-approved attorneys' fees, expenses, and costs. The  
 25 named Plaintiff has consented to the submission of this proposed settlement for the Court's  
 26 approval.  
 27

13. Based upon discovery conducted by Plaintiff, as well as information exchanged during the mediation process, Plaintiff estimates that approximately 1.4 million payment cards issued by the putative class were “Alerted on,”<sup>2</sup> and will be subject to the Settlement Agreement. Based on documents obtained during the litigation, I estimate that there are approximately 4,000 Class Members (financial institutions that issued Alerted On Payment Cards). Under the proposed Distribution Plan that will govern payments from the Distribution Fund, Settlement Class Members that file an Approved Claim will receive a Cash Payment Award per Claimed-On Card without having to submit documentation or prove their losses. The amount of the cash payments will depend on the total number of Alerted on Payment Cards for which an Approved Claim is submitted by Settlement Class Members, but is guaranteed to be at least \$2.00 per card. By way of example, if all Settlement Class Members submit valid claims covering all Alerted on Payment Cards, Settlement Class Members would receive \$2.00 per Claimed-On Card. If the total approved Claimed-On Cards is less than 500,000, the per-card Cash Payment Award will be increased *pro rata* until the total Distribution Fund reaches \$1 million. For example, if 10% of eligible payment cards are validly Claimed-On (140,000), then Settlement Class Members should receive approximately \$7.14 per card ( $\$1,000,000/140,000 \approx \$7.14$ ). If 25% of eligible payment cards are validly Claimed-On (350,000), then Settlement Class Members should receive approximately \$2.85 per card ( $\$1,000,000/350,000 \approx \$2.85$ ).

14. For purposes of effectuating individualized, direct Mail Notice, Class Counsel have arranged for Visa and MasterCard to identify each financial institution that issued an Alerted-on Payment Card and to submit to the Settlement Administrator the legal address of such financial institutions. Additionally, during the discovery and/or mediation process, Class Counsel obtained information sufficient to identify each financial institution that issued an Alerted-on Payment Card for payment cards branded by Discover and JCB. Class Counsel will provide relevant contact information to the Settlement Administrator for financial institutions

---

<sup>2</sup> The term “Alerted on Payment Card” is fully defined within the Settlement Agreement at Paragraph 1.

1 that issued Discover and JCB Alerted on Payment Cards. I believe that the proposed notice plan  
2 represents the best practicable notice to the Settlement Class Members.

3 15. I have reviewed the proposed Claim Form to be used by the Settlement Class  
4 Members to submit their claims. The Claim Form is simple and straightforward and requires  
5 only the provision of very basic information. Based upon my experience with the settlement of  
6 other class action data breach cases on behalf of financial institutions, I believe that the simplicity  
7 of the Claim Form will increase participation from Settlement Class Members.

8 16. The lawyers who represented Plaintiff are abundantly qualified and experienced  
9 to represent the class, including specifically Joseph P. Guglielmo, my co-lead counsel. The  
10 background and firm profiles of both my firm and Mr. Guglielmo's firm, Scott + Scott, are  
11 attached to this Declaration as Exhibits B and C. These materials provide additional details  
12 regarding our qualifications to serve as co-lead counsel for the class.

13 17. In this case, Mr. Guglielmo and I, along with our respective law firms, Scott +  
14 Scott and Carlson Lynch, have done substantial work in vigorously pursuing the interests of our  
15 client and the class it sought to represent throughout the litigation. We were assisted in this effort  
16 by two additional law firms representing the Plaintiff which, together with our firms, have  
17 extensive experience litigating complex and class actions and have demonstrated particular  
18 success in litigating data security breach class actions. We have aggressively litigated this action  
19 – briefing numerous substantive issues, taking and defending depositions, managing the review  
20 of thousands of pages of documents produced by Defendant and third parties, and making  
21 multiple comprehensive assessments of the legal and factual strengths and weaknesses of the  
22 case – and thus have adequate information on which to negotiate and evaluate this Settlement.  
23 The group of lawyers and law firms representing Plaintiff in this matter are at the forefront of the  
24 fast-developing area of data breach law and litigation. Had the action not settled, counsel for  
25 Plaintiff were prepared to devote substantial additional time and effort pressing Plaintiff's claims  
26 through class certification, trial and any subsequent appeal.  
27

1           18. Plaintiff, the proposed Settlement Class Representative, has demonstrated its  
2 adequacy in selecting well-qualified proposed Class Counsel, monitoring the Litigation, and  
3 participating in discovery and the mediation process. Plaintiff's employees were highly  
4 cooperative in making themselves available for document production and/or deposition  
5 testimony. Additionally, Plaintiff actively communicated with Class Counsel for purposes of  
6 advising and consulting with regard to the consequences of the Cyber Attack and the resulting  
7 damages. These communications were crucial to the development of a workable damage model  
8 to facilitate the mediation process. I am not aware of any facts relevant to this litigation that  
9 create a conflict of interest between Plaintiff and the Class.

10           19. Based on my experience and expertise, I believe that the settlement is fair,  
11 adequate, reasonable, an excellent result for the class, and represents a desirable resolution of  
12 this litigation. Generally speaking, in the still developing area of data breach litigation, there are  
13 many impediments to victory for a plaintiff suffering harm in a data breach (or cyber attack), as  
14 well as significant impediments to class certification. In this case, all of these uncertainties and  
15 impediments are present. Given these litigation risks, this Settlement is a good one for the  
16 Settlement Class Members and provides an opportunity for the recoupment of a significant  
17 percentage of the losses resulting from the Cyber Attack.

18           20. Mr. Guglielmo and I solicited, received and reviewed bids from multiple  
19 settlement administration firms. Based on our review of the bids and credentials of these firms,  
20 and subject to this Court's approval, we believe the firm Analytics Consulting LLC is well-  
21 suited to serve as the Settlement Administrator and will provide administration services at a  
22 reasonable cost. Analytics is a well-known settlement administration firm that has successfully  
23 administrated many class action settlements. I have worked with Analytics in other class action  
24 settlements and have always been satisfied with its work.

25           21. The service award requested for Plaintiff is not predicated on the existence of  
26 any special treatment, negotiation, or promise from Class Counsel. The request is being made  
27

1 purely as a legitimate consideration to Plaintiff for its efforts in initiating the lawsuit, staying  
 2 abreast of all aspects of the litigation, cooperating in discovery, and fairly and adequately  
 3 protecting the interests of the absent class members.

4 22. The Settlement Agreement includes a provision (§ 70) granting Eddie Bauer  
 5 discretion to terminate the Settlement Agreement if Settlement Class Members representing a  
 6 certain number of Alerted on Payment Cards elect to opt out of the Settlement Class. That  
 7 number is separately agreed to by the Parties and will be submitted to the Court for *in camera*  
 8 review if requested. Other than the Settlement Agreement itself and the separate agreement  
 9 establishing the opt-out threshold referenced in SA § 70, I am aware of no agreements made in  
 10 connection with this proposed settlement that would need to be disclosed pursuant to Fed. R.  
 11 Civ. P. 23(e)(3).

12 23. Because the settlement represents a fair and reasonable recovery on behalf of the  
 13 Plaintiff and the proposed class, I believe that the Court should approve the settlement and  
 14 direct notice to be issued to the class.

15 I declare under penalty of perjury that the foregoing is true and correct. This  
 16 Declaration was executed on April 26, 2019, in Pittsburgh, Pennsylvania.

17  
 18 By: 

19 Gary F. Lynch, *pro hac vice*  
 20 CARLSON LYNCH, LLP  
 21 1133 Penn Avenue, 5th floor  
 22 Pittsburgh, PA 15222  
 23 Telephone: (412) 322-9243  
 24 Facsimile: (412) 231-0246  
 25 glynch@carlsonlynch.com  
 26  
 27

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement” or “Settlement Agreement”), dated as of April 26, 2019, is made and entered into by and among the following Parties: (1) Plaintiff Veridian Credit Union (“Veridian” or “Plaintiff”), on behalf of itself and the Settlement Class, by and through Joseph P. Guglielmo of Scott+Scott Attorneys at Law LLP and Gary F. Lynch of Carlson Lynch LLP (collectively, “Class Counsel”); and (2) Defendant Eddie Bauer, LLC (“Eddie Bauer” or “Defendant”), by and through its counsel of record, Jon P. Kardassakis of Lewis Brisbois Bisgaard & Smith LLP, and subject to preliminary and final Court approval, as required by Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”).

### **I. RECITALS**

A. On March 7, 2017, Veridian filed an action against Eddie Bauer in the U.S. District Court for the Western District of Washington after Eddie Bauer reported third-party criminal cyber-attacks of its stores nationwide involving malware that targeted customers’ payment card information. ECF No. 1.

B. On June 5, 2017, Plaintiff filed its Amended Class Action Complaint (the “Amended Complaint”), asserting claims for negligence, negligence *per se*, violation of RCW 19.255.02, violation of Washington’s Consumer Protection Act (“CPA”), RCW 19.86, and declaratory and injunctive relief. ECF No. 36.

C. On June 15, 2017, Eddie Bauer moved to dismiss the Complaint (the “Motion to Dismiss”). ECF No. 40. On July 24, 2017, Veridian filed its opposition to the Motion to Dismiss. ECF No. 53. On November 9, 2017, the Court granted in part and denied in part Eddie Bauer’s Motion to Dismiss (the “MTD Order”). ECF No. 69. On November 27, 2017, Plaintiff filed its Second Amended Class Action Complaint (the operative “Complaint”) to conform to the Court’s MTD Order. ECF No. 70.

D. Thereafter, the Parties engaged in significant motion practice and discovery. In particular, Plaintiff served Eddie Bauer with document requests, and Eddie Bauer produced hundreds of thousands of pages of documents, which Plaintiff’s counsel reviewed. Plaintiff also deposed Eddie Bauer’s corporate representatives pursuant to Fed. R. Civ. P. 30(b)(6) and deposed nine party and non-party fact witnesses. Additionally, Plaintiff obtained and reviewed tens of thousands of pages of documents from numerous third parties in response to subpoenas Plaintiff served, including subpoenas served on the major card brands.

E. Eddie Bauer served Plaintiff with 164 document requests to which Veridian responded with the production of thousands of pages of responsive documents. Eddie Bauer also deposed Veridian’s corporate representative pursuant to Fed. R. Civ. P. 30(b)(6).

F. This Settlement resulted from good faith, arm’s-length settlement negotiations, including one full-day mediation before the Honorable Jay C. Gandhi (Ret.). The Parties also participated in numerous direct discussions about possible resolution of the Litigation. The Parties did not discuss with one another or agree upon attorneys’ fees, costs, and expenses until after agreeing to the essential terms of the Settlement.

G. Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in the Settlement and how best to serve the interests of the Settlement Class. Based on this investigation, and the negotiations described above, Class Counsel have concluded, taking into account the sharply contested issues involved, risks, uncertainty, and cost of further prosecution of the Litigation, and substantial benefits to be received by the Settlement Class pursuant to this Settlement, that a settlement with Eddie Bauer on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

H. Eddie Bauer denies all material allegations of the Complaint. Eddie Bauer specifically disputes that it is liable in any way for the third-party criminal cyber-attack and that Plaintiff and putative class members are entitled to any relief from Eddie Bauer. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, which is in addition to assessments from payment card brands, Eddie Bauer has agreed to settle the Litigation on the terms as set forth in this Settlement, subject to Court approval.

I. The Parties now agree to settle the Litigation in its entirety, without any admission of liability, with respect to all Released Claims. The Parties intend this Settlement to bind the Plaintiff, Eddie Bauer, and all Settlement Class Members who do not timely and validly exclude themselves from the Settlement Class.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Litigation be settled, compromised, and dismissed on the merits and with prejudice, subject to preliminary and final Court approval, as required by Rule 23, on the following terms and conditions:

## **II. DEFINITIONS**

In addition to the terms defined at various points within this Settlement, the following defined terms apply throughout this Settlement:

1. “Alerted on Payment Card” means any payment card (including debit and credit cards) that was identified as having been at risk as a result of the Cyber Attack in an alert or similar document by Visa, MasterCard, Discover, or JCB, including: (i) in an alert in the Visa US-2016-0665 series (e.g., US-2016-0665a-PA, US-2016-0665b-PA, US-2016-0665c-PA, US-2016-0665d-PA, US-2016-0665e-IC, US-2016-0665f-IC, US-2016-0665g-IC, US-2016-0665h-IC); (ii) in an alert in the MasterCard ADC001253-16 series; (iii) in an alert in the Discover DCA-USA-2016-6710 series; or (iv) in an alert or similar document by JCB similar to the foregoing Visa and MasterCard alerts.

2. “Approved Claim” means a claim for Settlement benefits made by a Settlement Class Member using a Claim Form found to be valid by and in an amount approved by the Settlement Administrator and shall be limited to claims submitted for an Alerted on Payment Card.

3. “Claims Administration” means the processing of Claim Forms received from Settlement Class Members and payment of Approved Claims by the Settlement Administrator, as

well as any other duties and obligations of the Settlement Administrator, as set forth in the Settlement.

4. “Claims Deadline” means the deadline by which Settlement Class Members must submit a claim for benefits under this Settlement, which shall be 120 days after entry of the Preliminary Approval Order unless a different deadline is set by the Court.

5. “Claim Form” shall mean the claim form attached as Attachment A to Exhibit 1 (including an electronic version thereof), or a claim form approved by the Court that is substantially similar to Attachment A to Exhibit 1.

6. “Class Counsel” means the below counsel of record for Plaintiff in the Litigation:

Gary F. Lynch  
CARLSON LYNCH LLP  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222

Joseph P. Guglielmo  
SCOTT+SCOTT ATTORNEYS AT LAW LLP  
230 Park Avenue, 17th Floor  
New York, NY 10169

7. “Complaint” means the operative Second Amended Class Action Complaint (ECF No. 70), filed in the Litigation on November 27, 2017.

8. “Costs of Settlement Administration” means all actual costs associated with or arising from Claims Administration and the Notice Program and providing the notice pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1715(b). The Costs of Settlement Administration shall be paid as set forth in this Settlement.

9. “Court” means the U.S. District Court for the Western District of Washington.

10. “Cyber Attack” means the third-party criminal cyber-attacks of Eddie Bauer’s stores in the United States involving malware targeting customers’ payment card data that Eddie Bauer reported in 2016, and that is the subject of the Litigation and Complaint.

11. “Effective Date” means the first business day after which all of the following events have occurred: (a) Class Counsel and Eddie Bauer’s counsel have executed this Settlement; (b) the Court has entered the Final Approval Order and Judgment without material change to either the Parties’ Settlement or agreed-upon proposed Final Approval Order and Judgment, as described in this Settlement and attached hereto as Exhibit 5; and (c)(i) the time for seeking rehearing, appellate, or other review of the Final Approval Order and Judgment has expired with no appeal, motion for rehearing, or motion for further review being filed, except as specifically described further in this definition; or (ii) the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired. The Effective Date shall not be altered, precluded, or delayed in the

event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses or Service Award in the amounts that Class Counsel requests. Further, the Effective Date shall not be altered, precluded, or delayed in the event that an appeal is filed, with the sole issues on appeal being the award of attorneys' fees, costs, and/or expenses to Class Counsel and/or Service Award.

12. "Escrow Account" means the interest bearing account to be established by the Settlement Administrator consistent with the terms and conditions described in the Settlement. All funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. §1.468B-1. Any taxes incurred by the Escrow Account shall be paid out of the account and are not the obligation of Eddie Bauer or Plaintiff.

13. "Final Approval" means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

14. "Final Approval Order and Judgment" means the order and judgment that the Court enters upon Final Approval and in the form of, or materially in the form of, the proposed Final Approval Order and Judgment attached hereto as Exhibit 5. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then the Final Approval Order and Judgment includes all such orders.

15. "Litigation" means the action styled *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.).

16. "Notice" means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

17. "Notice Deadline" means the date by which the Settlement Administrator is required to send out Mail Notice, which shall be 30 days after entry of the Preliminary Approval Order unless a different deadline is set by the Court.

18. "Notice Program" means the notice plan and methods provided for in this Settlement and consists of: (a) a direct mail notice to Settlement Class Members ("Mail Notice"); (b) Publication Notice (as described in more detail below); (c) notice posted on the Settlement Website; and (d) such other notice as is required by due process and Rule 23. The Notice Program shall be effected in substantially the manner provided for in this Settlement.

19. "Objection Deadline" means 114 days after entry of the Preliminary Approval Order unless a different deadline is set by the Court.

20. "Opt-Out Deadline" means 90 days after entry of the Preliminary Approval Order unless a different deadline is set by the Court.

21. "Parties" means Eddie Bauer and Plaintiff, individually and on behalf of the Settlement Class.

22. "Plaintiff" means Veridian Credit Union.

23. "Plaintiff's Released Persons" means Plaintiff, its current and former parents, subsidiaries, affiliated companies, and divisions and Plaintiff's counsel of record in the Litigation.

24. "Preliminary Approval Order" means the order preliminarily approving the Settlement and, among other things, ordering that notice be provided to the Settlement Class, and in the form of, or materially in the form of, the proposed Preliminary Approval Order attached hereto as Exhibit 4.

25. "Defendant's Released Persons" means: (a) Eddie Bauer LLC; (b) each of its or their respective current and former parents, subsidiaries, affiliated companies, and divisions, whether indirect or direct; and (c) the respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, reinsurers, shareholders, members, advisors, consultants, representatives, partners, joint venturers, and assigns of each of the entities and persons listed in sections (a) and (b) of this ¶25.

26. "Releasing Parties" means Plaintiff and all Settlement Class Members, who do not timely and validly exclude themselves from the Settlement, and each of these entities' current and former parents, subsidiaries, affiliated companies, and divisions, as well as these entities' heirs, assigns, beneficiaries, and successors.

27. "Service Award" means a payment of up to \$10,000 to Plaintiff, subject to Court approval, in compensation for its involvement in this Litigation and service on behalf of other financial institutions. Any Service Award will be paid out of the Settlement Fund.

28. "Settlement Agreement" or "Settlement" means this settlement agreement and release, including exhibits hereto.

29. "Settlement Administration Account" means the account established by the Settlement Administrator consistent with the terms and conditions described in the Settlement. Funds in this account will pay the Costs of Settlement Administration; any Court-approved Service Award to Plaintiff; and any Court-approved attorneys' fees, expenses, and costs.

30. "Settlement Administrator" means the entity to be selected by Class Counsel, subject to approval of Eddie Bauer's counsel, which shall not be unreasonably withheld, and approved by the Court to effectuate the Notice Program and Claims Administration per the terms of this Settlement.

31. "Settlement Class Members" or "Settlement Class" means all persons and entities that fall within the settlement class definition set forth in this Settlement.

32. "Settlement Class Representative" means Plaintiff.

33. “Settlement Consideration” means the following consideration to be paid or provided, or agreed to be paid or provided, by Eddie Bauer in this Settlement Agreement:

a. Distributions to Settlement Class Members Who Submit Approved Claims. Settlement distributions will total at least \$1,000,000 (the Minimum Payment Amount”), but will not exceed \$2,800,000 (the “Maximum Class Settlement Amount”). Settlement Class Members, who submit Approved Claims, will receive \$2.00 for each Alerted on Payment Card they identify in their Claim Form, subject to a *pro rata* increase if the value of all Approved Claims is less than \$1,000,000;

b. Payments for Costs of Administration of the Settlement. These payments will not exceed \$2,000,000 and will cover the Costs of Settlement Administration; any Court-approved Service Award to Plaintiff (not to exceed \$10,000); and any Court-approved attorneys’ fees, expenses, and costs (the “Administration and Fee Amount”); and

c. The injunctive relief concerning Eddie Bauer’s data security measures set forth in ¶42, for which Eddie Bauer has expended, and expects to expend, approximately \$5,000,000.

34. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but no later than the Notice Deadline, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to the Settlement, Notice, Preliminary Approval Order, Claim Form, Complaint, and such other documents as Class Counsel and Eddie Bauer’s counsel agree to post, or that the Court orders posted, on the website. These documents shall remain on the Settlement Website at least 60 days after the Effective Date. The URL of the Settlement Website shall be agreed upon by Class Counsel and Eddie Bauer’s counsel. Settlement Class Members shall also be able to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall not include any advertising and shall remain operational until at least 60 days after the Effective Date.

### **III. SETTLEMENT CLASS**

35. For settlement purposes only, the Parties agree that the Court should certify the following class pursuant to Fed. R. Civ. P. 23(b)(3), defined as:

All banks, credit unions, financial institutions, and other entities in the United States (including its Territories and the District of Columbia) that issued Alerted on Payment Cards. Excluded from the Settlement Class is the judge presiding over this matter and any members of his judicial staff, Eddie Bauer, and persons who timely and validly request exclusion from the Settlement Class.

If, for any reason, the Court does not enter the Final Approval Order and Judgment without material change, or if the Court does enter the Final Approval Order and Judgment without material change, but it is appealed or further reviewed and the Final Approval Order and Judgment is not affirmed or it is materially changed, the Settlement Agreement is of no force or

effect and may not be cited or relied upon in any way in support of a motion for class certification or for any other purpose.

36. For settlement purposes only, Class Counsel shall seek, and Eddie Bauer shall not oppose, the appointment of Class Counsel as settlement class counsel and the appointment of Plaintiff as Settlement Class Representative. Settlement Class Representative will move for provisional certification of the Settlement Class, for settlement purposes only, contemporaneously with its motion for preliminary approval of the Settlement. Eddie Bauer agrees not to contest provisional certification of the Settlement Class for settlement purposes only.

#### IV. SETTLEMENT CONSIDERATION

37. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases set forth in §IX and the dismissal of the Action upon the Effective Date, Eddie Bauer agrees to pay and provide the Settlement Consideration described in ¶33.

38. In no event shall Eddie Bauer be required to pay or provide more than the Settlement Consideration in connection with this Settlement.

39. Eddie Bauer shall fund the following payments of the Settlement Consideration, as set forth below:

a. Payment of Approved Claims to the Settlement Class. Following the Claim Validation Process, as set forth in the Distribution Plan (attached hereto as Exhibit 1), payments to the Settlement Class shall be administered on a “claims made” basis. This means that Eddie Bauer will fund only those Approved Claims submitted by Settlement Class Members in accordance with the Distribution Plan. Eddie Bauer will not be required to establish a settlement fund. Instead, the Settlement Administrator will establish an Escrow Account. Within 15 days of the establishment of the Escrow Account, Eddie Bauer will fund the account with a minimum of \$1,000,000 or an amount equal to the aggregate amount of Approved Claims, whichever is more. The aggregate amount of Approved Claims shall be determined by the Settlement Administrator. The fund will be used solely for payment of Approved Claims. The fund shall not exceed an amount equal to the aggregate amount of Approved Claims or \$2,800,000, whichever is less. The fund in this Escrow Account shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. §1.468B-1. Eddie Bauer will fully satisfy its obligation to fund this account upon depositing the appropriate amount as directed by the Settlement Administrator, and all risk of loss thereafter passes to Plaintiff and the Settlement Class;

b. Payment of Costs Associated with Administration of Settlement. Eddie Bauer will pay no more than \$2,000,000. These costs will be: (i) the Costs of Settlement Administration; (ii) any Court-approved Service Award to Plaintiff (not to exceed \$10,000); and (iii) any Court-approved Class Counsel attorneys’ fees, costs, and

expenses. These costs will be paid from the Settlement Administration Account as follows:

i. Regarding payment of the Costs of Settlement Administration, including Settlement Administrator invoices, these shall be paid by Eddie Bauer. Payment for such costs shall be made to the Settlement Administration Account, by wire transfer, within 15 days of receipt from the Settlement Administrator of an invoice upon entry of the Preliminary Approval Order by the Court. All Costs of Settlement Administration funded by Eddie Bauer, regardless of when they are paid, shall act as a credit and reduce Eddie Bauer's obligation to pay Costs of Settlement Administration;

ii. Regarding payment of any Court-approved Service Award to Plaintiff, Eddie Bauer shall fund such payment to the Settlement Administration Account, by wire transfer, within fifteen (15) days of the Effective Date. Any such Service Award will then be paid to Plaintiff by the Settlement Administrator; and

iii. Regarding payment of any Court-approved Class Counsel attorneys' fees, costs, and expenses, Eddie Bauer shall fund such payment to the Settlement Administration Account, by wire transfer, within fifteen (15) days of the Effective Date. Any such payment will then be made to Class Counsel by the Settlement Administrator.

40. Eddie Bauer shall be under no obligation to fund any other, additional, or greater amount than the Settlement Consideration reflected in ¶39, and may withdraw from the Settlement if an award is made in a greater amount. The attorneys' fees, costs, and expenses and any Service Award awarded by the Court will be funded by Eddie Bauer, not by the Class Members. Class Counsel will not seek attorneys' fees, costs, and expenses or a Service Award other than as provided for in ¶39.

41. The funds in the Escrow Account, if any, shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. §1.468B-1, at all times, from the creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed upon Eddie Bauer, Plaintiff, and/or Class Counsel, with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively, "Taxes"), shall be paid out of the Escrow Account. The Escrow Account shall indemnify and hold Eddie Bauer, Plaintiff, and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification) and Eddie Bauer, Plaintiff, and Class Counsel shall have no liability or responsibility for any of the Taxes.

42. Injunctive Relief. In partial consideration of the full settlement and release of all Released Claims against Defendant's Released Persons, Eddie Bauer agrees to the following injunctive relief for a period of two years from the Effective Date. Consistent with its

obligations to comply with the Payment Card Industry Data Security Standard ("PCI DSS"), Eddie Bauer will maintain a comprehensive information security program that is reasonably designed to protect the security, integrity, and confidentiality of payment cardholder data. This compliance will continue to contain administrative, technical, and physical safeguards consistent with PCI DSS, which are intended to protect the cardholder data environment. These measures will include the following:

- a. maintaining properly configured firewalls to protect cardholder data;
- b. maintaining policies and procedures to not use vendor-supplied defaults for system passwords and other security parameters;
- c. continuing to protect stored cardholder data, including the segmentation of production and non-production servers and the removal of all internet access for non-production servers;
- d. continuing to encrypt transmission of cardholder data across open public networks;
- e. continuing to protect all systems against malware and to regularly update anti-virus software or programs, including the deployment of anti-virus protections on Eddie Bauer's store-based IT assets;
- f. continuing to maintain secure systems and applications;
- g. continuing to restrict access to cardholder data to those with a legitimate business need to know, including the maintenance of a privileged user access management solution;
- h. continuing to identify and authenticate access to system components;
- i. continuing to restrict physical access to cardholder data;
- j. continuing to track and monitor all access to network resources and cardholder data, including monitoring, alerting, and logging related to identification of indicators of compromise on computer systems and network endpoints;
- k. continuing to maintain point-to-point encryption and tokenization across all U.S. stores and on Eddie Bauer's website, including its Order Entry System;
- l. continuing to maintain EMV capability across all U.S. stores;
- m. continuing to regularly test security systems and processes and conduct regular penetration testing; and
- n. maintaining a policy that addresses information security for all personnel. Eddie Bauer will regularly review and revise, as necessary, its information security policies and incident response plan.

The costs associated with maintaining these provisions and compliance with PCI DSS since the Cyber Attack, combined with the costs of these measures for at least two years, exceeds \$5,000,000.

43. The measures set forth above will be materially maintained for at least two years following the Effective Date, subject to any of the following: (a) a determination by the Eddie Bauer officer designated as the head of Eddie Bauer's cyber-security program that the measure is no longer in the best interest of Eddie Bauer, including, but not limited to, due to circumstances making the measure no longer applicable, feasible, or available on commercially reasonable terms; or (b) modifications which Eddie Bauer reasonably believes are required by applicable law or regulation.

## **V. PRELIMINARY APPROVAL**

44. Upon execution of this Settlement, Class Counsel shall promptly move the Court for an order granting the Preliminary Approval Order, substantially in the form attached hereto as Exhibit 4. The motion for preliminary approval shall request that the Court: (a) preliminarily approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (b) provisionally certify the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3) and (e) for settlement purposes only; (c) approve the Settlement Administrator, Notice Program set forth herein, form and content of the Notice, and Claim Form; (d) approve the procedures set forth in this Settlement for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (e) stay all proceedings in the Litigation unrelated to the Settlement pending Final Approval of the Settlement; (f) stay and/or enjoin, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning any Released Claims; (g) appoint Class Counsel and Settlement Class Representative; and (h) schedule a Final Approval hearing at a date that provides sufficient time for the deadlines contemplated by this Settlement and that is convenient for the Court, at which time the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel's application for attorneys' fees, costs, and expenses and Service Award (the "Final Approval Hearing").

45. Within 10 days of the filing of the motion for preliminary approval, Eddie Bauer shall serve, or cause to be served, a notice of the proposed Settlement on appropriate state officials in accordance with the requirements under CAFA. Costs of disseminating the notice required under CAFA shall be borne as Costs of Settlement Administration.

## **VI. SETTLEMENT ADMINISTRATOR**

46. The Settlement Administrator shall administer various aspects of the Settlement and perform such other functions as are specified for the Settlement Administrator elsewhere in this Settlement, including, but not limited to, overseeing administration of the Class Settlement Amount; providing Notice to Settlement Class Members, as described in this Settlement; effecting Publication Notice; establishing and operating the Settlement Website and a toll-free number; administering the claims processes; and distributing cash payments according to the processes and criteria established by this Settlement.

47. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Settlement, include:

- a. implementing the Notice Program required by this Settlement;
- b. establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;
- c. establishing and maintaining the Settlement Website;
- d. establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement Agreement-related inquiries and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- e. responding to any mailed Settlement Class Member inquiries;
- f. processing all written notifications of exclusion from the Settlement Class and providing deficiency notices, as set forth herein;
- g. providing weekly reports and, no later than 10 days after the Opt-Out Deadline, a final report to Class Counsel and Eddie Bauer that summarizes the number of written notifications of exclusion received that week, total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and Eddie Bauer's counsel;
- h. in advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and validly provided written notification of exclusion from the Settlement Class;
- i. reviewing, determining the validity of, and responding to all claims submitted by Settlement Class Members, pursuant to criteria established by this Settlement Agreement;
- j. after the Effective Date, processing and transmitting distributions to Settlement Class Members that submitted Approved Claims;
- k. providing weekly reports and a final report to Class Counsel and Eddie Bauer's counsel that summarize the number of claims since the prior reporting period, total number of claims received to date, number of any claims approved and denied since the prior reporting period, total number of claims approved and denied to date, and other pertinent information as requested by Class Counsel and Eddie Bauer's counsel;
- l. performing any function related to Claims Administration at the agreed-upon instruction of the Parties, including, but not limited to, verifying that cash payments have been distributed in accordance with this Settlement; and

m. Providing notice pursuant to CAFA, including serving, or causing to be served, a notice of the proposed Settlement on appropriate state officials in accordance with the requirements under CAFA.

48. Eddie Bauer and Class Counsel shall have the right, to be exercised in their sole discretion, but not the obligation, to advise the Settlement Administrator to waive what Eddie Bauer or Class Counsel reasonably deems to be formal or technical defects in any Claim Forms submitted, including, without limitation, failure to submit a Claim Form by the Claims Deadline, in the interests of achieving substantial justice.

## **VII. NOTICE, OPT-OUTS, AND OBJECTIONS**

49. Upon entry of the Preliminary Approval Order of the Settlement, at the direction of Class Counsel, the Settlement Administrator will begin implementing the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members may access this Settlement and other related documents and information.

50. The Notice Program has three components: (1) Mail Notice; (2) Publication Notice; and (3) Notice on the Settlement Website. The Notice Program is to be implemented as follows:

a. Within 14 days after entry of the Preliminary Approval Order, or as soon as practicable, Class Counsel will provide, or will cause to be provided, available contact information to the Settlement Administrator for banks, credit unions, and other financial institutions that are potentially Settlement Class Members. Based upon information obtained from Class Counsel and from other reasonably available sources, the Settlement Administrator will prepare a final list of potential Settlement Class Members to which Notice will be issued;

b. Mail Notice will be sent to those on the final list by the Notice Deadline. The Mail Notice shall consist of the long-form notice, in the form attached hereto as Exhibit 2, and Claim Form, in the form attached hereto as Attachment A to Exhibit 1. For any Mail Notices that are returned undeliverable with forwarding address information, the Settlement Administrator shall re-mail the Mail Notice to the updated address as indicated. For any Mail Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated mailing addresses (such as running the mailing address through the National Change of Address Database) and re-mail the Mail Notice to the extent updated addresses are identified. The Settlement Administrator need only make one attempt to re-mail any Mail Notices that are returned as undeliverable;

c. The Settlement Administrator will cause to be published in the digital edition of the *ABA Banking Journal*, and/or other publications typically read by bank and

credit union executives. the summary notice attached hereto as Exhibit 3. The publications in which the notice will appear and the dates and frequency of the Publication Notice will be determined by the Settlement Administrator in consultation with the Parties. The Settlement Administrator may also utilize other means of Publication Notice in consultation with the Parties;

d. The Settlement Administrator will send out at least one reminder mailing during the claims period to those Settlement Class Members that have not yet filed claims;

e. The Settlement Administrator will establish a toll-free number to respond to inquiries from Settlement Class Members by the Notice Deadline;

f. By the Notice Deadline, the Settlement Administrator will create and maintain the Settlement Website, which will contain the information and documents required by this Settlement. The Settlement Website will be configured so that Settlement Class Members may file claims electronically; and

g. The Parties agree to provide any additional notice that the Court determines is necessary to meet the requirements of due process or Rule 23, the cost of which shall be deemed part of the Costs of Settlement Administration and paid from the Class Settlement Amount, as provided for in the Settlement.

51. The Notice shall include a procedure for Settlement Class Members to exclude themselves from the Settlement by notifying, in writing, the Settlement Administrator, Class Counsel, and Eddie Bauer's counsel of their intent to exclude themselves from the Settlement. The notice shall be sent via first class postage prepaid U.S. mail to the addresses provided in the Notice. Such written notification must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. The written notification must include the name of this Litigation (*Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.)); the full name, address, and telephone number of the Settlement Class Member; the name, address, email address, telephone number, position, and signature of the individual who is acting on behalf of the Settlement Class Member; the words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement; and the total number of payment cards issued by the Settlement Class Member that were identified as having been at risk as a result of the Cyber Attack in any alerts or similar documents by Visa, MasterCard, Discover, and JCB. The Settlement Administrator shall provide the Parties with copies of all opt-out notifications on a weekly basis and a final list of all who have timely and validly excluded themselves from the Settlement, which Class Counsel may move to file under seal with the Court no later than 10 days prior to the Final Approval Hearing. Any Settlement Class Member who does not provide a timely notice, or who does not provide all information required by this Settlement to exclude itself, shall be bound by the terms of the Settlement, including all releases in the Settlement.

52. In the event that a Settlement Class Member purports to provide notice of its intention to opt-out of the Settlement, but fails to provide all of the information set forth above, including specifically the identification of the number of payment cards issued by the Settlement

Class Member that were identified as having been at risk as a result of the Cyber Attack in an alert or similar document by Visa, MasterCard, Discover, and JCB, the Settlement Administrator shall, within five days of receiving the deficient notice, send the Settlement Class Member a deficiency notice. The deficiency notice shall inform the Settlement Class Member that its attempt to opt-out is deficient, invalid, and without legal effect. The deficiency notice shall be sent by the Settlement Administrator via email, and, if email is not feasible, then by USPS Priority Express mail. The deficiency notice shall also inform the Settlement Class Member that it must re-submit to an email address to be provided by the Claims Administrator a valid notice requesting exclusion that includes all of the required information, including, but not limited to, the number of payment cards identified as at risk, no later than 10 days from the date of the deficiency notice in order for its opt-out to be effective. If the Settlement Class Member fails to provide all of the required information on or before that deadline, then its attempt to opt-out shall be invalid and have no legal effect, and the Settlement Class Member shall be bound by the Settlement, including the releases.

53. The Notice shall also include a procedure for Settlement Class Members to object to the Settlement, Class Counsel's request for attorneys' fees, costs, and expenses, and/or the application for Service Award. Objections to the Settlement, Class Counsel's request for attorneys' fees, costs, and expenses, and/or to the application for Service Award must be filed electronically with the Court, or mailed to the Clerk of the Court, Class Counsel, and Eddie Bauer's counsel. For an objection to be considered by the Court, the objection must be: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Class Counsel, and Eddie Bauer's counsel at the addresses listed in the Notice and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the Litigation: *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.);
- b. the full name of the objector and full name, address, email address, and telephone number of the person acting on its behalf;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. whether the objection applies only to the objector, a specific subset of the Settlement Class, or the entire Settlement Class;
- e. all grounds for the objection stated, with specificity, accompanied by any legal support for the objection;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement, Class Counsel's request for attorney's fees, costs, and expenses, or the application for Service Award;
- g. the identity of all representatives (including counsel representing the objector) who will appear at the Final Approval Hearing;

h. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;

i. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;

j. if the objector is represented by an attorney who intends to seek fees and expenses from anyone other than the objectors he or she represents, the objection should also include: (i) a description of the attorney's legal background and prior experience in connection with class action litigation; (ii) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought are calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (v) the attorney's hourly rate;

k. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between the objector or objector's counsel and any other person or entity;

l. a description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;

m. a statement indicating whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

n. the objector's signature on the written objection (an attorney's signature is not sufficient).

54. In addition, any Settlement Class Member that objects to the proposed Settlement must make itself available to be deposed regarding the grounds for its objection and must provide, along with its objection, the dates when the objector will be available to be deposed during the period from when the objection is filed through the date seven days before the Final Approval Hearing.

55. Any Settlement Class Member who both objects to the Settlement Agreement and opts-out will be deemed to have opted-out and the objection shall be deemed null and void.

56. The Mail Notice shall be sent or issued by the Notice Deadline, excluding any re-mails for Mail Notices that are returned undeliverable and any reminder Mail Notices to be sent during the claims period.

57. At least 10 days before the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel and Eddie Bauer with one or more affidavits confirming that the Notice Program was completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to, or in conjunction with, Settlement Class Representative's motion for Final Approval of the Settlement.

58. In the event that the Settlement is not approved, or if Eddie Bauer elects to terminate the Settlement, and the Administration and Fee Amount is not created, Eddie Bauer will not be entitled to a return of any of the monies it has paid to the Settlement Administrator for the Costs of Settlement Administration up to that point. Class Counsel and the Settlement Administrator will take reasonable steps to ensure that no further Costs of Settlement Administration are incurred thereafter without Eddie Bauer's express written approval.

#### **VIII. FINAL APPROVAL ORDER AND JUDGMENT**

59. Settlement Class Representative's motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur, which shall be sufficiently far in advance to allow for the deadlines contemplated by this Settlement. The Final Approval Hearing shall be scheduled no earlier than 90 days after the CAFA notices are mailed to ensure compliance with 28 U.S.C §1715 and no earlier than 135 days after entry of the Preliminary Approval Order in order to afford objectors, if any, sufficient time to review Class Counsel's motion for Final Approval of the Settlement (the "Final Approval Motion") and motion for attorneys' fees, costs, and expenses and a Service Award (the "Fee Application"). By no later than 100 days after entry of the Preliminary Approval Order, unless a different deadline is set by the Court, Class Counsel shall file their Final Approval Motion and Fee Application. The deadline to file an objection and any response to Class Counsel's Final Approval Motion and Fee Application is no later than 114 days after entry of the Preliminary Approval Order, unless a different deadline is set by the Court (or 14 days after the Final Approval Motion and Fee Application are filed). By no later than 128 days after entry of the Preliminary Approval Order, unless a different deadline is set by the Court (or 28 days after the Final Approval Motion and Fee Application are filed), responses shall be filed to any filings by objectors, if any, and any replies in support of the Final Approval Motion and Fee Application shall be filed. At the Final Approval Hearing, the Court will consider the Final Approval Motion and Fee Application. In the Court's discretion, the Court also may hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel), who object to the Settlement and/or Class Counsel's Fee Application, provided the objectors filed timely objections that meet all of the requirements listed in this Settlement.

60. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and Judgment granting Final Approval of the Settlement, and whether to approve Class Counsel's Fee Application. The proposed Final Approval Order and Judgment that will be filed with the Final Approval Motion shall be in a form agreed upon by

Class Counsel and Eddie Bauer as set forth in Exhibit 5 attached hereto. Such proposed Final Approval Order and Judgment shall, among other things:

- a. determine that the Settlement is fair, adequate, and reasonable;
- b. finally certify the Settlement Class for settlement purposes only;
- c. determine that the Notice provided satisfied Rule 23 and due process requirements;
- d. dismiss all claims in the Complaint and Litigation with prejudice;
- e. bar and enjoin the Releasing Parties from asserting any of the Released Claims, including during the pendency of any appeal from the Final Approval Order and Judgment;
- f. release and forever discharge Eddie Bauer and Defendant's Released Persons from the Released Claims and release Plaintiff's Released Persons, as provided in this Settlement Agreement; and
- g. reserve the Court's continuing and exclusive jurisdiction over Eddie Bauer and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Settlement in accordance with its terms.

#### **IX. RELEASES**

61. As of the Effective Date, the Releasing Parties, each on behalf of itself and any predecessors, successors, or assigns, shall automatically be deemed to have fully, completely, finally, irrevocably, and forever released and discharged Defendant's Released Persons of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown (including Unknown Claims), existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the Cyber Attack, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of: (a) Eddie Bauer's information security policies and practices; (b) the allegations, facts, and/or circumstances described in the Litigation and/or Complaint; (c) Eddie Bauer's response to and notices about the Cyber Attack; (d) the fraudulent use of any Alerted on Payment Cards; (e) the cancellation and reissuance of any Alerted on Payment Cards; and (f) any expenses incurred investigating, responding to, or mitigating potential damage from the theft or illegal use of Alerted on Payment Cards or information relating to such cards (the "Released Claims").

62. For the avoidance of doubt, the Released Claims include, without limitation, any claims, causes of actions, remedies, or damages that were, or could have been, asserted in the Litigation and also include, without limitation: any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under the California Business & Professions Code §17200, *et seq.*, Cal. Civ. Code §1750, *et seq.*, Cal. Civ. Code

§1798.80, *et seq.*, Cal. Civ. Code §56.10, *et seq.*, and any similar statutes or data security incident notification statutes in effect in the United States or in any states in the United States); causes of action under the common or civil laws of any state in the United States, including, but not limited to, unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or of any states in the United States; any statutory claims under state or federal law; and also including, but not limited to, any and all claims in any state or federal court of the United States for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit or financial account monitoring services, identity theft insurance, the creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver, and any other form of relief.

63. As of the Effective Date, Defendant's Released Persons will be deemed to have completely released and forever discharged the Releasing Parties and Plaintiff's Released Persons from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Litigation. For the avoidance of doubt, Defendant's Released Persons' release, as set forth in this ¶63, does not include entities that do not meet the definition of either Releasing Parties or Plaintiff's Released Persons.

64. "Unknown Claims" means any of the Released Claims that any Settlement Class Member, including the Settlement Class Representative, does not know or suspect to exist in its favor at the time of the release of Defendant's Released Persons that, if known by it, might have affected its settlement with, and release of, the Defendant's Released Persons, or might have affected its decision not to object to and/or to participate in this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, the Settlement Class Representative expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, waived the provisions, rights, and benefits conferred by Cal. Civ. Code §1542 to the extent applicable, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. §28-1-1602; North Dakota Cent. Code §9-13-02; and South Dakota Codified Laws §20-7-11), which is similar, comparable, or equivalent to Cal. Civ. Code §1542, which provides:

*A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.*

(Emphasis added.) Settlement Class Members, including the Settlement Class Representative, and any of them, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Settlement Class Representative expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

65. As of the Effective Date, Settlement Class Members shall be enjoined from prosecuting any claim they have released in this Settlement in any proceeding against any of Defendant's Released Persons or based on any actions taken by any of Defendant's Released Persons that are authorized or required by this Settlement or by the Final Approval Order and Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding or action asserting claims released by this Settlement.

#### **X. ATTORNEYS' FEES, COSTS, AND EXPENSES AND SERVICE AWARD**

66. Eddie Bauer agrees to pay to Class Counsel, subject to the Court's approval, Class Counsel's attorneys' fees, costs and expenses as part of its payment of the Administration and Fee Amount described in ¶33 above.

67. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, the requested Service Award and/or attorneys' fees, costs, and expenses will not prevent the Settlement Agreement from becoming effective, nor will it be grounds for termination. If the Court declines to approve, in whole or in part, the requested Service Award and/or attorneys' fees, costs, and expenses in the amount set forth above, or at all, the remaining provisions of this Settlement Agreement will remain in full force and effect.

68. Neither Class Counsel's application for nor any individual's entitlement to a Service Award shall be conditioned in any way upon such individual's support for this Settlement.

69. Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among Plaintiff's counsel of record.

#### **XI. TERMINATION**

70. Eddie Bauer shall have the sole discretion to terminate the Settlement Agreement if Settlement Class Members representing a certain number of Alerted on Payment Cards elect to opt-out of the Settlement Class. That number is separately agreed to by the Parties and will be submitted to the Court for *in camera* review if requested. If Eddie Bauer elects to terminate the Settlement Agreement, it must notify Class Counsel that it intends to pursue that right pursuant to this provision, if any such right exists, no later than 35 days after the Opt-Out Deadline.

71. If the requirements to terminate the Settlement Agreement set forth in ¶70 are met, and Eddie Bauer provides Class Counsel with notice of its intent to terminate the Settlement Agreement, Class Counsel will have 60 days from the date of such notice for the purposes of communicating with any Settlement Class Members, who have opted-out, to attempt to have such Settlement Class Members withdraw their opt-outs and remain in the Settlement Class. The Parties will use their best efforts to resolve any issues of Settlement Class Members who have elected to opt-out, and Eddie Bauer agrees to cooperate fully with respect to the handling of opt-outs, including communicating to any would-be opt-outs at Class Counsel's request, to attempt to have such Settlement Class Members revoke their opt-outs and remain in the Settlement Class. Specifically, at the request of Class Counsel, Eddie Bauer agrees to write a pre-prepared letter, subject to approval of Class Counsel, requesting any would-be opt-out to remain in the Settlement Class. This letter will be used only after a Settlement Class Member submits an opt-out notice.

72. This Settlement Agreement may be terminated by either the Settlement Class Representative or Eddie Bauer by serving on counsel for the opposing Party, and filing with the Court, a written notice of termination within 14 days (or such longer time as may be agreed between Class Counsel and Eddie Bauer) after any of the following occurrences:

- a. Class Counsel and Eddie Bauer agree to termination before the Effective Date;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. an appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
- d. the Court, or any reviewing appellate court, incorporates material terms or provisions into, deletes or strikes material terms or provisions from, or materially modifies, amends, or changes the proposed Preliminary Approval Order, Preliminary Approval Order, proposed Final Approval Order and Judgment, Final Approval Order and Judgment, or Settlement; or
- e. the Effective Date does not occur.

73. In the event of a termination, as provided for in the Settlement, the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement shall cease to be of any force and effect, and the Parties shall return to the *status quo ante* in the Litigation, as if the Parties had not entered into this Settlement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including all defenses to class certification.

## **XII. NO ADMISSION OF LIABILITY**

74. Eddie Bauer disputes the claims alleged in the Litigation and does not, by this Settlement or otherwise, admit any liability or wrongdoing of any kind. Eddie Bauer has agreed

to enter into this Settlement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation and to be completely free of any further claims that were asserted, or could have been asserted, in the Litigation.

75. Class Counsel and Settlement Class Representative believe that the claims asserted in the Litigation have merit, and they have examined and considered the benefits to be obtained under the Settlement, risks associated with the continued prosecution of this complex, costly, and time-consuming Litigation, and likelihood of success on the merits of the Litigation. Class Counsel and Settlement Class Representative have concluded that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

76. The Parties understand and acknowledge that this Settlement constitutes a compromise and settlement of disputed claims. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with this Settlement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever.

77. Neither the Settlement nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is, may be deemed to be, or may be used as an admission of, or evidence of, the validity of any claim made by Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Defendant's Released Persons; or (b) is, may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of the Defendant's Released Persons in the Litigation or in any proceeding in any court, administrative agency, or other tribunal.

### **XIII. MISCELLANEOUS**

78. Singular and Plurals. As used in this Settlement, all references to the plural shall also mean the singular and all references to the singular shall also mean the plural whenever the context so indicates.

79. Binding Effect. This Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and Defendant's Released Persons.

80. Settlement Class Member Communications. Other than at Class Counsel's request, Eddie Bauer shall not communicate with any Settlement Class Member during the pendency of the Settlement approval process regarding this Litigation, the decision to opt-out, or relief being awarded in the Settlement and represents that it has not previously so communicated with any Settlement Class Members regarding these topics. For purposes of clarity, this provision restricts only communications regarding the Litigation and/or Settlement; it does not purport to limit any other communications.

81. Cooperation of Parties. The Parties to this Settlement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, defend Court approval, and do all things reasonably necessary to complete and effectuate the Settlement, as described herein.

Nothing in this provision is intended to limit any Party's right to terminate the Settlement in accordance with its terms.

82. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of, or related to, this Settlement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

83. Entire Agreement. This Settlement (along with any exhibits attached hereto) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

84. No Conflict Intended. Any inconsistency between the headings used in this Settlement and the text of the paragraphs of this Settlement shall be resolved in favor of the text.

85. Governing Law. The Settlement shall be construed in accordance with, and be governed by, the laws of the state of Washington, without regard to the principles thereof regarding choice of law.

86. Counterparts. This Settlement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

87. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Settlement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and Settlement Administration. As part of its agreement to render services in connection with this Settlement Agreement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

88. Notices. All notices to Class Counsel provided for herein, shall be sent by overnight mail and email to:

Joseph P. Guglielmo  
SCOTT+SCOTT ATTORNEYS AT LAW LLP  
230 Park Avenue, 17th Floor  
New York, NY 10169  
jguglielmo@scott-scott.com

Gary F. Lynch  
CARLSON LYNCH LLP

1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
glynch@carlsonlynch.com

All notices to Eddie Bauer provided for herein, shall be sent by overnight mail and email to:

Sean B. Hoar  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
888 SW Fifth Avenue, Suite 900  
Portland, OR 97204-2025  
sean.hoar@lewisbrisbois.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

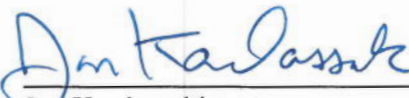
89. Authority. Any person executing this Settlement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Settlement to all of the terms and provisions of this Settlement.

90. No Construction Against Drafter. This Settlement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Settlement.

Dated: April 26, 2019

---

Joseph P. Guglielmo  
**SCOTT+SCOTT**  
**ATTORNEYS AT LAW LLP**  
230 Park Avenue, 17th Floor  
New York, NY 10169



---

Jon Kardassakis  
**LEWIS BRISBOIS BISGAARD & SMITH LLP**  
633 West 5th Street, Suite 4000  
Los Angeles, CA 90071

*Counsel for Eddie Bauer*

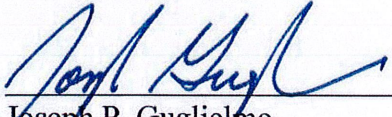
---

Gary F. Lynch  
**CARLSON LYNCH LLP**  
1133 Penn Avenue, 5th Floor  
Pittsburg, PA 15222

*Counsel for Plaintiff and Settlement Class*

90. No Construction Against Drafter. This Settlement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Settlement.

Dated: April 26, 2019



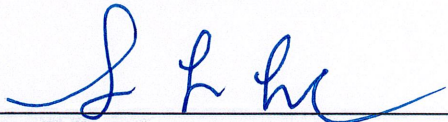
Joseph P. Guglielmo

**SCOTT+SCOTT**  
**ATTORNEYS AT LAW LLP**  
230 Park Avenue, 17th Floor  
New York, NY 10169

Jon Kardassakis

**LEWIS BRISBOIS BISGAARD &  
SMITH LLP**  
633 West 5th Street, Suite 4000  
Los Angeles, CA 90071

*Counsel for Eddie Bauer*



Gary F. Lynch

**CARLSON LYNCH LLP**  
1133 Penn Avenue, 5th Floor  
Pittsburg, PA 15222

*Counsel for Plaintiff and Settlement Class*

# **EXHIBIT 1**

## EXHIBIT 1 TO THE SETTLEMENT AGREEMENT

### **Distribution Plan for Cash Payment Awards to Settlement Class Members**

**1. Definitions.** Terms defined in the Settlement Agreement to which this document is an exhibit are incorporated herein by reference. In addition, as used herein, the terms set forth in this section in boldface type will have the meaning described below. Additional terms are defined at various points in this Distribution Plan.

- 1.1 **Claim Referee.** This term means a person selected by the Parties to handle certain disputes relating to claims. A Claim Referee need not be selected or approved until and unless a dispute arises that cannot otherwise be resolved pursuant to the procedure set forth in §5 below. Any amounts paid to a Claim Referee will be made from the Settlement Fund.
- 1.2 **Claimed-On Card.** An Alerted on Payment Card, as defined in the Settlement Agreement, that was issued by a Settlement Class Member and for which the Settlement Class Member seeks compensation under the Settlement.
- 1.3 **Disputed Claim.** This term has the meaning as set forth in §5.1.
- 1.4 **Distribution Fund.** This term has the meaning as set forth in §4.1
- 1.5 **Cash Payment Award.** This term has the meaning as set forth in §2.1.
- 1.6 **Supplemental Remainder.** This term has the meaning as set forth in §4.3.

**2. Claims.** All Settlement Class Members that submit a valid, properly completed Claim Form, under penalty of perjury, on or before the Claims Deadline are eligible to receive a Cash Payment Award without proof of documentation, except that which must be asserted in the Claim Form or requested for review by the Settlement Administrator, Claim Referee, or Court.

- 2.1 **Cash Payment Awards.** A Settlement Class Member can seek a cash payment based on the number of Alerted on Payment Cards that the Settlement Class Member issued. To be eligible to receive a Cash Payment Award, a Settlement Class Member must timely (*i.e.*, on or before the Claims Deadline) submit a valid Claim Form, under penalty of perjury, and properly complete the form, providing all requested information. Settlement Class Members do not need to submit any documentation in order to be eligible to receive a Cash Payment Award, except that which must be asserted in the Claim Form or requested for review by the Settlement Administrator, Claim Referee, or Court. Each Settlement Class Member that timely submits a valid Claim Form and properly completes the form will be eligible for a payment per Claimed-On Card issued by such Settlement Class Member (the “Cash Payment Award”). The amount paid to Settlement Class Members per Claimed-On Card will be \$2.00, subject to *pro rata* increase, if the value of all Approved Claims meets the Minimum Payment Amount (defined below).

- 2.2 **Claim Form.** The Claim Form to be used by Settlement Class Members seeking Cash Payment Awards is attached hereto as Attachment A. To receive a Cash Payment Award, Settlement Class Members must complete, sign, and timely submit the Claim Form.

**3. Claim Validation Process.**

- 3.1 All Claim Forms must be submitted in the manner and by the Claims Deadline specified in the Settlement.
- 3.2 The Settlement Administrator will begin evaluating timely Claim Forms on or after the Effective Date. The Settlement Administrator may require supplementation of a Claim Form or additional information necessary to validate or audit a claim. To the extent that a Settlement Class Member fails to provide any supplementation or additional information so requested, the Settlement Administrator may determine that the Settlement Class Member failed to submit a valid claim and therefore reject that claim.
- 3.3 The Settlement Administrator, in its discretion to be reasonably exercised, will evaluate claims submitted for Cash Payment Awards to determine whether: (a) the claimant is a Settlement Class Member; (b) the Claim Form is complete and accurate; and (c) the Settlement Class Member signed the Claim Form as required.

**4. Distribution of the Qualified Settlement Fund.** Following the Claim Validation Process and as soon as practicable, but no later than 90 days from the Effective Date, the Settlement Administrator will distribute the Qualified Settlement Fund, as follows:

- 4.1 **Funds Available for Distribution to Settlement Class Members.** The amount available for distribution to Settlement Class Members (the “Distribution Fund”) shall be equal to the number of the Settlement Class Member’s Claimed-On Cards, as submitted in Approved Claims, x \$2.00, or \$1,000,000 (the “Minimum Payment Amount”), whichever is greater. In no event shall the Distribution Fund exceed \$2,800,000 (the “Maximum Class Settlement Amount”).
- 4.2 **Payment of Cash Payment Awards.** Each Settlement Class Member that submits an Approved Claim will receive a Cash Payment Award per Claimed-On Card. Each Settlement Class Member’s Cash Payment Award shall be calculated as follows: the total number of the Settlement Class Member’s Claimed-On Cards, as submitted in Approved Claims, x \$2.00. For example, if a Settlement Class Member submits an Approved Claim identifying 100 Claimed-On Cards, the Settlement Class Member’s Cash Payment Award would equal \$200.00. If the total value of all Cash Payment Awards to Settlement Class Members that submitted Approved Claims is less than the Minimum Payment Amount of \$1,000,000, the amount of each Approved Claim shall be proportionately increased *pro rata* on a per Claimed-On Card basis until the total value of all Cash Payment Awards to Settlement Class Members that submitted Approved Claims is equal to \$1,000,000.

For the avoidance of doubt, in no event will the total Cash Payment Awards to Settlement Class Members exceed a total of \$2,800,000.

- 4.3 **Cy Pres Distribution.** If, after payment of the Cash Payment Awards, any checks distributed to Settlement Class Members that remain uncashed after 180 days, the remaining amounts (the “Supplemental Remainder”), to the extent a second distribution to Settlement Class Members who submitted Approved Claims is not feasible, such Supplemental Remainder will be distributed to *cy pres* entities that will be selected by Class Counsel, subject to Court approval.

## 5. **Dispute Resolution.**

- 5.1 If the Settlement Administrator determines that a Settlement Class Member’s number of Claimed-On Cards is fewer than the number claimed by such issuer in its Claim Form (a “Disputed Claim”), the Settlement Administrator will notify the claimant by email to the email address identified in the Claim Form (or a mailing address for those that do not provide an email address).
- 5.2 Each recipient of any notice pursuant to §5.1 herein will have 10 days from receipt of such notice to respond to the Settlement Administrator by reply email (or regular mail for those that did not provide an email address) by stating whether the claimant accepts or rejects the Settlement Administrator’s determination regarding the Disputed Claim. If claimant fails to timely respond to the notice provided pursuant to §5.1, then the Settlement Administrator’s determination regarding the Disputed Claim shall be deemed final and accepted by the claimant.
- 5.2.1 If the claimant rejects the Settlement Administrator’s determination regarding the Disputed Claim, the Settlement Administrator will have 10 days to reconsider the original determination, make a final determination, and communicate the final determination to the claimant by email (or regular mail for those that did not provide an email address). The claimant will then have 10 days to reply back to the Settlement Administrator to accept or reject the final determination. If claimant fails to timely respond to the notice provided pursuant to §5.2.1, then the claimant shall be deemed to have accepted the Settlement Administrator’s final determination.
- 5.2.2 If the claimant accepts the final determination, then the Settlement Administrator’s final determination regarding the Disputed Claim will be used in calculating the Settlement Class Member’s Cash Payment Award. If the final determination regarding the Disputed Claim is timely rejected by the claimant, then the Disputed Claim will be resolved in accordance with the procedures set out in §§5.3 and 5.4.
- 5.3 After receipt of a claimant’s rejection of a final determination regarding a Disputed Claim, the Settlement Administrator will provide Class Counsel and Eddie Bauer’s counsel (together, “Counsel”) with a copy of the Claim Form and any

documentation submitted by the claimant, and the communications between the Settlement Administrator and the claimant (the “Claim File”).

- 5.3.1 Counsel will confer regarding the Disputed Claim.
- 5.3.2 If Counsel agree, as applicable, that a claimant issued the number of Claimed-On Cards claimed on its Claim Form, Counsel’s determination will be final. Counsel will inform the Settlement Administrator of their determination by email, and the Settlement Administrator will provide notice of the decision to the claimant.
- 5.3.3 If Counsel agree, as applicable, that a claimant issued fewer than the number of Claimed-On Cards claimed on its Claim Form, then Counsel will notify the Settlement Administrator by email (“Counsel’s Notice”), and if the Settlement Class Member continues to dispute Counsel’s determination, the Disputed Claim at issue will be submitted to the Claim Referee. The Parties need not select a Claim Referee unless and until such time as one is needed.
- 5.3.4 If Counsel disagree, as applicable, during the inquiries described in §§5.3.2 or 5.3.3, the Disputed Claim(s) at issue will be submitted to the Claim Referee.
- 5.4 After receipt of Counsel’s Notice, the Settlement Administrator will provide the Claim Referee with a copy of the Claim File. The Claim Referee will make a final determination regarding the Disputed Claim. All such final determinations will be made by the Claim Referee based on whether the number of Claimed-On Cards at issue in the Disputed Claim, or some portion thereof, is reasonably supported in fact. The Claim Referee’s decision will be final.

## **ATTACHMENT A**



**CERTIFICATION OF PAYMENT CARDS:** Please complete all parts of the question below:

Is your financial institution the issuer of one or more payment cards that were identified in any of the categories of alerts or similar documents below? (Check All Applicable Boxes Below.)

If you checked "YES" for any category of alert(s) (or similar documents), indicate how many payment card accounts your financial institution issued that were identified in the referenced alert(s) or similar documents. For purposes of completing this form, please note that a payment card number can have only one corresponding payment card account, even if your financial institution issued multiple payment cards bearing the card number.

(a) Visa alert(s) in the US-2016-0665 series,	<input type="checkbox"/> YES <input type="checkbox"/> NO
Number of Issued Accounts Identified:	<input type="text"/>
(b) MasterCard alert(s) in the ADC001253-16 series,	<input type="checkbox"/> YES <input type="checkbox"/> NO
Number of Issued Accounts Identified:	<input type="text"/>
(c) Discover cards alert(s) in the DCA-USA-2016-6710 series,	<input type="checkbox"/> YES <input type="checkbox"/> NO
Number of Issued Accounts Identified:	<input type="text"/>
(d) JCB alert(s) or similar documents relating to the Eddie Bauer Cyber Attack,	<input type="checkbox"/> YES <input type="checkbox"/> NO
Number of Issued Accounts Identified:	<input type="text"/>

**If you are unable to answer YES to any part of Question 1 then your financial institution is not a Settlement Class Member and is not eligible to participate in this Settlement. Please do not submit a form.**

**SIGN CLAIM FORM**

By submitting this Claim Form, the above-named Settlement Class Member certifies that it is eligible to make a claim in this settlement and that the information provided in this claim form is true and correct. The Duly Authorized Representative of the Settlement Class Member declares under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. The above-named Settlement Class Member understands that this claim may be subject to audit, verification, and Court review.

\_\_\_\_\_  
Signature of Duly Authorized Representative  
of Settlement Class Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**CLAIM SUBMISSION REMINDERS**

- You may submit your claim by mail or through the website at **[WEBSITE]**.
- Please keep a copy of this claim form if submitting by mail.
- Claims must be submitted through the website by \_\_\_\_\_, **2019**, or mailed so they are postmarked, by \_\_\_\_\_, **2019**.

## **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

**If your financial institution issued one or more payment cards identified as having been at risk as a result of the cyber-attack that Eddie Bauer announced in 2016, it could get a payment from a class action settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been proposed to resolve a lawsuit against Eddie Bauer, LLC (“Eddie Bauer”) brought by a financial institution, as a result of third-party criminal cyber-attacks of Eddie Bauer’s point-of-sale systems, involving malware targeting customers’ payment card information that Eddie Bauer reported in 2016 (the “Cyber Attack”).
- The lawsuit, *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.), alleges that Eddie Bauer is legally responsible for the Cyber Attack and asserts claims for negligence and violation of RCW 19.255.020 and the Washington Consumer Protection Act, RCW 19.86. Eddie Bauer denies these allegations and claims it did not do anything wrong.
- Under the Settlement, Eddie Bauer will pay, on a claims-made basis, at least \$1,000,000, and up to \$2,800,000, into an Escrow Account out of which the Settlement Administrator will make payments to eligible Settlement Class Members. A Settlement Class Member, who submits a valid claim, will receive \$2.00 for each eligible payment card it issued, subject to a *pro rata* increase if the total value of eligible claims submitted is less than \$1,000,000. In addition, Eddie Bauer agrees to certain injunctive relief and will continue to maintain compliance with the Payment Card Industry Data Security Standards, for which Eddie Bauer has expended, and expects to expend, approximately \$5,000,000. Eddie Bauer also has agreed to pay up to an additional \$2,000,000 to cover the Costs of Settlement Administration, which may include any attorneys’ fees, costs, and expenses and Service Award payments that are approved by the Court.

*Your financial institution’s legal rights are affected whether you act or don’t act. Read this notice carefully.*

<b>SUBMIT A CLAIM FORM</b>	If eligible, your financial institution will receive a cash payment. This is the only way to receive compensation from the Settlement.
<b>EXCLUDE YOUR FINANCIAL INSTITUTION</b>	If you ask to be excluded, you will not receive a cash payment, but you may be able to file your own lawsuit against Eddie Bauer for the same claims. This is the only option that leaves your financial institution the right to file its own lawsuit against Eddie Bauer and/or Defendant’s Released Persons (as defined in the Settlement) for the claims that are being resolved by the Settlement. In order to be effective, a request to be excluded from the Settlement must include all information required by the Settlement.
<b>OBJECT</b>	Your financial institution can remain in the Settlement Class and file an objection telling the Court why you do not like the Settlement. If your objections are overruled, your financial institution will be bound by the Settlement.
<b>DO NOTHING</b>	If you do nothing, you will not receive any cash payment. If you do nothing, you will also forfeit your right to sue or bring any claim against Eddie Bauer and/or Defendant’s Released Persons (as defined in the Settlement) related to the Cyber Attack.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**Questions? Call 1-XXX-XXX-XXXX toll free, or visit [Website]**

WHAT THIS NOTICE CONTAINS

**Basic Information .....Page X**

1. Why did my financial institution get this notice package?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a settlement?

**Who is Part of the Settlement.....Page X**

5. How does a financial institution know if it is part of the Settlement?
6. Are there exceptions to being included?
7. I am still not sure if my financial institution is included.

**The Settlement Benefits .....Page X**

8. What does the Settlement provide?
9. How much will my financial institution's payment be?

**How to Get a Payment – Submitting a Claim Form .....Page X**

10. How can my financial institution get payment?
11. When would my financial institution get its payment?
12. What is my financial institution giving up to get a payment or remain in the Settlement Class?

**Excluding Your Financial Institution from the Settlement.....Page X**

13. How can my financial institution opt-out of the Settlement?
14. If my financial institution doesn't opt-out, can it sue Eddie Bauer for the same thing later?
15. If my financial institution excludes itself, can it get money from this Settlement?

**The Lawyers and Financial Institutions Representing You.....Page X**

16. Does my financial institution have a lawyer in the case?
17. How will the lawyers and financial institutions representing the class be paid?

**Objecting to the Settlement .....Page X**

18. How does a financial institution tell the Court that it does not like the Settlement?
19. What is the difference between objecting and excluding/opting-out?

**The Court's Final Approval Hearing .....Page X**

20. When and where will the Court decide whether to approve the Settlement?
21. Does my financial institution have to attend the hearing?

**If You Do Nothing .....Page X**

22. What happens if my financial institution does nothing at all?

**Getting More Information .....Page X**

23. How do I get more information?

## BASIC INFORMATION

### 1. Why did my financial institution get this notice package?

Your financial institution may have issued payment cards identified in one of the alerts (or a similar document) sent out by the card brands (Visa, MasterCard, Discover, or JCB) related to the Cyber Attack.

The Court authorized this notice because you have a right to know about your financial institution's rights under a proposed class action settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after objections and appeals are resolved, a Settlement Administrator appointed by the Court will make the cash payments that the Settlement allows.

This package explains the lawsuit, Settlement, your financial institution's rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the U.S. District Court for the Western District of Washington, and the case is known as *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356. The financial institution that sued is called the "Plaintiff," and the company it sued, Eddie Bauer, is the "Defendant."

### 2. What is this lawsuit about?

The lawsuit, *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.), alleges that Eddie Bauer is legally responsible for the Cyber Attack and asserts claims for negligence and violation of RCW 19.255.020 and the Washington Consumer Protection Act, RCW 19.86. The financial institution seeks to recover damages in the lawsuit for the expense of payment card reissuance, amounts paid to cover fraudulent payment card charges, and other costs allegedly incurred as a result of the Cyber Attack. Eddie Bauer denies any wrongdoing.

### 3. Why is this a class action?

In a class action, one or more entities called "class representatives" sue on behalf of themselves and other entities with similar claims. All of these entities together are the "class" or "class members." One court resolves the issues for all class members, except for those who exclude themselves from the settlement class.

### 4. Why is there a settlement?

The Court has not decided in favor of Plaintiff or Eddie Bauer. Instead, both sides, with the assistance of a mediator, agreed to the Settlement. The Settlement is not an admission that Eddie Bauer did something wrong, but rather a compromise to end the lawsuit. By agreeing to settle, both sides avoid the costs, risks, and uncertainties of a trial and related appeals, while providing benefits to members of the Settlement Class. The Settlement Class Representative and the attorneys for the Settlement Class think the Settlement is best for all class members.

## WHO IS PART OF THE SETTLEMENT

### 5. How does a financial institution know if it is part of the Settlement?

Your financial institution is a member of the Settlement Class and affected by the Settlement if:

- It is a financial institution, bank, credit union, or other entity in the United States (including its Territories and the District of Columbia); and
- It issued one or more payment card (including debit and credit cards) that was identified as having been at risk as a result of the Cyber Attack in an alert or similar document by Visa, MasterCard, Discover, or JCB, including: (i) in an alert in the Visa US-2016-0665 series (*e.g.*, US-2016-0665a-PA, US-2016-0665b-PA, US-2016-0665c-PA, US-2016-0665d-PA, US-2016-0665e-IC, US-2016-0665f-IC, US-2016-0665g-IC, US-2016-0665h-IC); (ii) in an alert in the MasterCard ADC001253-16 series; (iii) in an alert in the Discover DCA-USA-2016-6710 series; or (iv) in an alert or similar document by JCB similar to the foregoing Visa and MasterCard alerts.

Specifically **excluded** from the Settlement Class is the judge presiding over this matter and any members of his judicial staff, Eddie Bauer, and persons who timely and validly request exclusion from the Settlement Class.

#### 6. Are there exceptions to being included?

If your financial institution excludes itself from the Settlement, it is no longer part of the Settlement Class and will no longer be eligible to receive any of the Settlement benefits. This process of excluding your financial institution is also referred to as “opting-out” of the Settlement.

#### 7. I am still not sure if my financial institution is included.

If you are still not sure whether your financial institution is included, you can ask for free help. You can call 1-XXX-XXX-XXXX or visit [website] for more information. Or you can fill out and return the Claim Form described in Question 10, to see if you qualify.

### THE SETTLEMENT BENEFITS

#### 8. What does the Settlement provide?

Eddie Bauer has agreed to pay, on a claims-made basis, at least \$1,000,000, and up to \$2,800,000, into an Escrow Account out of which the Settlement Administrator will make payments to eligible Settlement Class Members. A Settlement Class Member who submits a valid claim will receive \$2.00 for each eligible payment card it issued, subject to a *pro rata* increase if the total value of eligible claims submitted is less than \$1,000,000. In addition, Eddie Bauer has agreed to continue to maintain compliance with the Payment Card Industry Data Security Standards, for which Eddie Bauer has expended, and expects to expend, approximately \$5,000,000. Eddie Bauer also has agreed to pay up to an additional \$2,000,000 to cover the Costs of Settlement Administration, which may include any attorneys’ fees, costs, and expenses and Service Award payments that are approved by the Court.

#### 9. How much will my financial institution’s payment be?

If your financial institution is eligible to participate in the Settlement and does not “opt-out” of the Settlement, it may be eligible for benefits under the Settlement. If your financial institution issued any payment cards (including debit and credit cards) that were identified as having been at risk as a result of the Cyber Attack in an alert (or similar document) by Visa, MasterCard, Discover, or JCB, it may be eligible for a payment from the Escrow Fund. Eddie Bauer has agreed to pay, on a claims-made basis, at least \$1,000,000, and up to \$2,800,000, into an Escrow Account out of which the Settlement Administrator will make payments to eligible Settlement Class Members.

All Settlement Class Members who file a valid claim are eligible to receive a cash payment from the Settlement Fund per each payment card (including debit and credit cards) that was identified as having been at risk as a result of the Cyber Attack in an alert (or similar document) by Visa, MasterCard, Discover, or JCB. You are not required to submit any documentation or evidence of your financial institution’s losses to receive a payment. A Settlement Class Member, who submits a valid claim, will receive \$2.00 for each eligible payment card it issued, subject to a *pro rata* increase if the total value of eligible claims submitted is less than \$1,000,000.

### HOW TO GET A PAYMENT – SUBMITTING A CLAIM FORM

#### 10. How can my financial institution get payment?

To qualify for a payment, you must validly complete and submit a Claim Form, which is included with this notice. You may also get this Claim Form on the internet at [Website]. All Settlement Class Members that wish to obtain compensation must complete and submit the Claim Form. No documentation of losses is required.

To properly complete and timely submit a Claim Form, you should read the instructions carefully, include all information required by the Claim Form, sign it, and either submit the signed Claim Form electronically through [Website] by \_\_\_\_\_, 2019, or mail it to the Settlement Administrator postmarked no later than \_\_\_\_\_, 2019, at the following address:

**[Settlement Administrator Address]**

The Settlement Administrator will review your claim to determine the amount of your financial institution's payment.

**11. When would my financial institution get its payment?**

The Court will hold a hearing on [redacted] to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them takes time, perhaps more than a year. Payments to Settlement Class Members will be made after the Settlement is finally approved and any appeals, or other required proceedings, have been completed, as set forth in the Settlement. You may visit [Website] for updates on the progress of the Settlement. Please be patient.

**12. What is my financial institution giving up to get a payment or remain in the Settlement Class?**

Unless you exclude your financial institution from the Settlement, your financial institution cannot sue, or be part of any other lawsuit against, Eddie Bauer or Defendant's Released Persons (as defined in the Settlement) relating to the Cyber Attack. The specific claims your financial institution is giving up against Eddie Bauer are described in the Settlement. The terms of the release are described in §IX of the Settlement. Read it carefully. The Settlement is available at [Website].

If you have any questions, you can talk to the law firms listed in Question 16 for free, or you can, of course, talk to your own lawyer if you have questions about what this means.

If your financial institution wants to keep its rights to sue Eddie Bauer based on claims this Settlement resolves, your financial institution must take steps to exclude itself from the Settlement Class (*see* Questions 13-15).

**EXCLUDING YOUR FINANCIAL INSTITUTION FROM THE SETTLEMENT****13. How can my financial institution opt-out of the Settlement?**

To exclude your financial institution from the Settlement, or "opt-out," you must send a letter by U.S. mail that includes the information in the bullet points below. If you fail to include this information, the notice of exclusion will be ineffective and the Settlement Class Member will be bound by the Settlement, including all releases.

- The name of this Litigation: *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.);
- Your financial institution's full name, address, and phone number;
- The words "Request for Exclusion" at the top of the document, or a statement in the body of the document requesting exclusion from the Settlement Class;
- The name, address, email address, telephone number, position, and signature of the individual who is acting on behalf of the Settlement Class Member; and
- The total number of payment cards issued by your financial institution that were identified as having been at risk as a result of the Cyber Attack in any alerts (or similar documents) by Visa, MasterCard, Discover, and JCB.

You must mail via first class postage prepaid U.S. mail the completed, above-described letter, postmarked no later than [redacted], 2019, to each of the following addresses:

**Settlement Administrator:**

Eddie Bauer Data Breach Settlement  
c/o [redacted]  
P.O. Box [redacted]  
[redacted]

**Settlement Class Counsel:**

Joseph P. Guglielmo  
SCOTT+SCOTT  
ATTORNEYS AT LAW LLP  
230 Park Avenue, 17th Floor  
New York, NY 10169

**Defense Counsel:**

Sean B. Hoar  
LEWIS BRISBOIS BISGAARD &  
SMITH LLP  
888 SW Fifth Avenue, Suite 900  
Portland, OR 97204-2025

If you ask to be excluded, your financial institution will not get any payment as part of this Settlement, and you cannot object to this Settlement. Your financial institution will not be legally bound by anything that happens in the

Settlement and related proceedings. Your financial institution may be able to sue (or continue to sue) Eddie Bauer in the future. If you object to the Settlement and seek to exclude your financial institution, you will be deemed to have excluded your financial institution.

**14. If my financial institution doesn't opt-out, can it sue Eddie Bauer for the same thing later?**

No. Unless you exclude your financial institution from the Settlement, your financial institution gives up any right to sue Eddie Bauer (as further detailed in the Settlement) for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. Your financial institution must exclude itself from this Settlement to continue its own lawsuit. Remember, the exclusion deadline is [REDACTED], 2019.

**15. If my financial institution excludes itself, can it get money from this Settlement?**

No. If you exclude your financial institution, do not send in a Claim Form asking for a payment.

**THE LAWYERS AND FINANCIAL INSTITUTIONS REPRESENTING YOU**

**16. Does my financial institution have a lawyer in the case?**

Yes. The Court appointed the following law firms to represent your financial institution and other members of the Settlement Class: Carlson Lynch LLP, in Pittsburgh, Pennsylvania; and Scott+Scott Attorneys at Law LLP, in New York, New York. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**17. How will the lawyers and financial institution representing the Settlement Class be paid?**

The law firms representing Plaintiff and the Settlement Class have not yet received any payment to compensate them for the time and expenses and financial risk that they undertook when they agreed to represent Plaintiff on a contingent basis, which means that they would receive a fee only if the lawsuit was successful. The lawyers intend to ask the Court to approve an award of up to \$2,000,000 to cover: (i) the Costs of Settlement Administration; (ii) reasonable attorneys' fees, costs, and expenses; and (iii) a service award of up to \$10,000 to the Settlement Class Representative for the efforts that it has expended on behalf of the Settlement Class (the "Administration and Fee Amount").

Eddie Bauer has agreed not to object to the lawyers' motion to the Court to seek an Administration and Fee Amount of up to \$2,000,000, and Eddie Bauer will pay any Court-approved Administration and Fee Amount in addition to any cash distributions that are made to Settlement Class Members.

The Court will determine whether to approve the amount of fees and expenses requested by Plaintiff's lawyers and the proposed Service Award to the Settlement Class Representative at the Final Approval Hearing scheduled for [REDACTED], 2019. Plaintiff's lawyers will file an application for fees, costs, and expenses and a service award no later than [REDACTED], 2019. The application will be available on the Settlement Website ([Website]) or you can request a copy by contacting the Settlement Administrator (see Question 23).

**OBJECTING TO THE SETTLEMENT**

**18. How does my financial institution tell the Court that it does not like the Settlement?**

If your financial institution is a Settlement Class Member, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. The Court will consider your views. If you object to the Settlement and seek to exclude your financial institution, your financial institution will be deemed to have excluded itself.

Your objection must be in writing, shall not exceed 12 pages, and must include:

- The name of this Litigation: *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.);

- Your financial institution's full name and the full name, address, email address, and telephone number of the person acting on its behalf;
- An explanation of the basis for why your financial institution is a Settlement Class Member;
- Whether the objection applies only to your financial institution, a specific subset of the Settlement Class, or the entire Settlement Class;
- All grounds for the objection stated, with specificity, accompanied by any legal support for the objection;
- A description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;
- ***All other information specified in the Preliminary Approval Order*** (available on the settlement website at [Website]), including, but not limited to, information relating to any objections you or your counsel have filed in other class action litigation; and
- Your signature on the written objection.

Any objection must be either filed electronically with the Court or mailed to the Clerk of the Court, Class Counsel, and Eddie Bauer's counsel at the addresses set forth below. The objection must be electronically filed or, if mailed, postmarked no later than [redacted], 2019.

**Court:**

Clerk of the Court  
U.S.D.C, Western District of Washington  
United States Courthouse  
700 Stewart Street  
Seattle, WA 98101

**Settlement Class Counsel:**

Gary F. Lynch  
CARLSON LYNCH LLP  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
  
Joseph P. Guglielmo  
SCOTT+SCOTT  
ATTORNEYS AT LAW LLP  
230 Park Avenue, 17th Floor  
New York, NY 10169

**Defense Counsel:**

Sean B. Hoar  
LEWIS BRISBOIS BISGAARD &  
SMITH LLP  
888 SW Fifth Avenue, Suite 900  
Portland, OR 97204-2025

In addition, any Settlement Class Member that objects to the proposed Settlement must make itself available to be deposed regarding the grounds for its objection and must provide, along with its objection, the dates when the objector will be available to be deposed during the period from when the objection is filed through the date seven days before the Final Approval Hearing.

### 19. What is the difference between objecting and excluding/opting-out?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to the benefits provided by the Settlement or other terms of the Settlement only if your financial institution stays in the Settlement Class. Excluding your financial institution or "opting-out" is telling the Court that you don't want to be included in the Settlement Class. If your financial institution excludes itself, you have no basis to object to the Settlement and related releases because the Settlement no longer affects you.

## THE COURT'S FINAL APPROVAL HEARING

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on [redacted], 2019, in Courtroom Suite 14106 before U.S. District Judge James L. Robart of the U.S. District Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Seattle, Washington 98101. This hearing date and time may be moved. Please refer to the settlement website ([Website]) for notice of any changes.

By no later than [redacted], 2019, Class Counsel shall file a motion for final approval of the Settlement and a motion for attorneys' fees, costs, and expenses and a service award. The deadline to file an objection and any response to Class Counsel's motions is no later than [redacted], 2019. By no later than [redacted], 2019, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the

Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and a service award shall be filed.

At the Final Approval Hearing, the Court will consider, among other things, whether the Settlement is fair, reasonable, and adequate; how much Plaintiff's lawyers will receive for attorneys' fees and expenses; and whether to approve a service award to the Settlement Class Representative. If there are objections, the Court will consider them. The Court will listen to people at the hearing who file in advance a timely notice of their intention to appear (*see* Question 18). At or after the Final Approval Hearing, the Court will decide whether to approve the Settlement. There is no deadline by which the Court must make its decision.

**21. Does my financial institution have to attend the hearing?**

No. Class Counsel will answer questions the Court may have. You are welcome, however, to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you submitted your objection timely and in accordance with the requirements for objecting, as outlined in the Settlement (*see* Question 18), the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**IF YOU DO NOTHING**

**22. What happens if my financial institution does nothing at all?**

If your financial institution is a Settlement Class Member and does nothing, it will remain a part of the Settlement Class, but will not get any payments from the Settlement. And, unless your financial institution excludes itself, it will not be able to sue Eddie Bauer about the claims being resolved through this Settlement ever again. See the Settlement for more details about the releases (available at ([Website])).

**GETTING MORE INFORMATION**

**23. How do I get more information?**

This notice summarizes the Settlement. More details are in the Settlement itself. You can get a copy of the Settlement at ([Website]) or from the Settlement Administrator by calling toll-free 1-XXX-XXX-XXXX.

*Please do not contact the Court with questions about the Settlement.*

## **EXHIBIT 3**

**LEGAL NOTICE**

**If your financial institution issued one or more payment cards that was identified as having been at risk as a result of the cyber-attack that Eddie Bauer announced in 2016, it could get a payment from a class action settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

A settlement of a lawsuit against Eddie Bauer, LLC (“Eddie Bauer”) has been proposed in which Eddie Bauer has agreed to resolve putative class claims brought by a financial institution, arising from third-party criminal cyber-attacks of Eddie Bauer’s point-of-sale systems, involving malware targeting customers’ payment card information that Eddie Bauer reported in 2016 (the “Cyber Attack”). If your financial institution (“you”) qualifies, you may send in a claim form to get benefits, or you can exclude yourself from the Settlement, or object to it.

The U.S. District Court for the Western District of Washington authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to approve the Settlement.

### **Who Is Included?**

You are a member of the Settlement Class and affected by the settlement if:

- (1) You are a financial institution, bank, credit union, or other entity in the United States (including its Territories and the District of Columbia); and
- (2) You issued one or more payment cards (including debit and credit cards) that was identified as having been at risk as a result of the Cyber Attack in an alert or similar document by Visa, MasterCard, Discover, or JCB. (See the Settlement or Settlement Website for more details as to the payment cards that are included.)

### **What Is This Case About?**

The lawsuit, *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.), was filed by a financial institution and alleges that Eddie Bauer is legally responsible for the Cyber Attack. The lawsuit asserts claims for negligence and violation of RCW 19.255.020 and the Washington Consumer Protection Act, RCW 19.86. The lawsuit seeks, among other relief, to recover damages for the expense of payment card reissuance, amounts paid to cover fraudulent payment card charges, and other costs allegedly incurred responding to the Cyber Attack. Eddie Bauer denies any wrongdoing.

### **What Does the Settlement Provide?**

Eddie Bauer has agreed to pay, on a claims-made basis, at least \$1,000,000, and up to \$2,800,000, into an Escrow Account out of which the Settlement Administrator will make payments to eligible Settlement Class Members. A Settlement Class Member, who submits a valid claim, will receive \$2.00

for each eligible payment card it issued, subject to a *pro rata* increase if the total value of eligible claims submitted is less than \$1,000,000. Eddie Bauer has agreed to certain injunctive relief and to continue to maintain compliance with the Payment Card Industry Data Security Standards, for which Eddie Bauer has expended, and expects to expend, approximately \$5,000,000. Eddie Bauer also has agreed to pay up to an additional \$2,000,000 to cover the Costs of Settlement Administration, which may include any attorneys’ fees, costs, and expenses and Service Award payments that are approved by the Court.

### **How Do You Ask for a Payment?**

A detailed notice and Claim Form package contains everything you need. Just call the toll-free number or visit the website below to get one. To qualify for a payment, you must send in a Claim Form, which can be submitted electronically or by mail. Claim Forms must be submitted electronically or, if mailed, postmarked by **[Month 00], 2019**.

### **What Are Your Other Options?**

If you do not want to be legally bound by the Settlement, you must exclude yourself by **[Month 00], 2019**, or you will not be able to sue, or continue to sue, Eddie Bauer, or any other Defendant’s Released Persons (as defined in the Settlement), for any of the claims resolved by the Settlement. To exclude yourself, you must provide all required information. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement Class, but wish to object, you must do so by **[Month 00], 2019**. Details for excluding yourself or objecting to the Settlement can be found in the Settlement and on the Settlement Website.

The Court will hold a hearing in this case on **[Month 00], 2019**, to consider whether to approve the Settlement. At the hearing, the Court will also consider a request by the lawyers representing all Settlement Class Members for attorneys’ fees, costs, and expenses for investigating the facts, litigating the case, and negotiating the Settlement, as well as for a Service Award to the Plaintiff for its time participating in the case. You may ask to appear at the hearing, but you do not have to.

### **Want More Information?**

For more information, call toll free at **1-XXX-XXX-XXXX** or visit the website at **[Website]**.

## **EXHIBIT 4**

Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VERIDIAN CREDIT UNION, on behalf of  
itself and a class of similarly situated financial  
institutions,

Plaintiff,

v.

EDDIE BAUER LLC,

Defendant.

NO. 2:17-cv-00356-JLR

[PROPOSED] PRELIMINARY  
APPROVAL ORDER

This matter is before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of the Settlement (the "Motion") between Plaintiff Veridian Credit Union ("Plaintiff" or "Veridian"), for itself and on behalf of the Settlement Class, and Eddie Bauer, LLC ("Eddie Bauer" or "Defendant") for consideration of whether the Settlement reached by the Parties should be preliminarily approved, the proposed Settlement Class preliminarily certified, and the proposed plan for notifying the Settlement Class approved.<sup>1</sup> Having reviewed the proposed Settlement, together with its exhibits, and based upon the relevant papers and all prior proceedings in this matter, the Court has determined that the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class is preliminarily certified, and the proposed Notice Program is approved. Accordingly, good cause appearing in the record, Plaintiff's Motion is **GRANTED**, and **IT IS HEREBY ORDERED THAT:**

**Provisional Certification of the Settlement Class**

1. The Court provisionally certifies the following Settlement Class:

<sup>1</sup> Unless otherwise indicated, all capitalized terms used herein have the same meaning as those in the Settlement.

1 All banks, credit unions, financial institutions, and other entities in the United  
 2 States (including its Territories and the District of Columbia) that issued Alerted  
 3 on Payment Cards. Excluded from the Settlement Class is the judge presiding  
 over this matter and any members of his judicial staff, Eddie Bauer, and persons  
 who timely and validly request exclusion from the Settlement Class.

4 This Settlement Class is provisionally certified for purposes of settlement only.

5 2. The Court determines that for settlement purposes, the proposed Settlement Class  
 6 meets all the requirements of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, namely  
 7 that the class is so numerous that joinder of all members is impractical; there are common issues of  
 8 law and fact; the claims of the Plaintiff are typical of absent class members; Plaintiff will fairly and  
 9 adequately protect the interests of the class, as it has no interests antagonistic to or in conflict with  
 10 the class, and has retained Class Counsel who are experienced and competent counsel to prosecute  
 11 this matter; common issues predominate over any individual issues; and a class action is the superior  
 12 means of adjudicating the controversy.

13 3. Plaintiff is designated and appointed as the Settlement Class Representative.

14 4. The following lawyers, who were previously appointed by the Court as interim Co-  
 15 Lead Counsel, are designated as Class Counsel pursuant to Fed. R. Civ. P. 23(g): Joseph P. Guglielmo  
 16 of Scott+Scott Attorneys at Law LLP; and Gary F. Lynch of Carlson Lynch LLP. The Court finds  
 17 that these lawyers are experienced and will adequately protect the interests of the Settlement Class.

#### 18 **Preliminary Approval of the Proposed Settlement**

19 5. Upon preliminary review, the Court finds the proposed Settlement is fair, reasonable,  
 20 and adequate, satisfies Fed. R. Civ. P. 23 (“Rule 23”), otherwise meets the criteria for approval, and  
 21 warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is  
 22 preliminarily approved.

#### 23 **Final Approval Hearing**

24 6. A Final Approval Hearing shall take place before the Court on \_\_\_\_\_,  
 25 2019, at \_\_\_\_ a.m./p.m., in Courtroom Suite 14106, before Judge James L. Robart of the U.S. District  
 26 Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Seattle,  
 27 Washington 98101, to determine, among other things, whether: (a) the proposed Settlement Class

1 should be finally certified for settlement purposes, pursuant to Rule 23; (b) the Settlement should be  
 2 finally approved as fair, reasonable, and adequate and, in accordance with the Settlement's terms, all  
 3 claims in the Complaint and Litigation should be dismissed with prejudice; (c) Settlement Class  
 4 Members should be bound by the releases set forth in the Settlement; (d) the proposed Final Approval  
 5 Order and Judgment should be entered; (e) the application of Class Counsel for an award of attorneys'  
 6 fees, costs, and expenses should be approved; and (f) the application for a Service Award to Plaintiff  
 7 should be approved. Any other matters the Court deems necessary and appropriate will also be  
 8 addressed at the hearing.

9 7. Class Counsel shall submit their application for fees, costs, and expenses and the  
 10 application for a Service Award **100 days** after entry of this Order. The deadline to file an objection  
 11 and any response to Class Counsel's motions is no later than **114 days** after entry of this Order. By  
 12 no later than **128 days** after entry of this Order, responses shall be filed, if any, to any filings by  
 13 objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's  
 14 application for attorneys' fees, costs, and expenses and for a Service Award shall be filed.

15 8. Any Settlement Class Member that has not timely and properly excluded itself from  
 16 the Settlement Class in the manner described below may appear at the Final Approval Hearing in  
 17 person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed  
 18 Settlement; provided, however, that no Settlement Class Member that has elected to exclude itself  
 19 from the Settlement Class shall be entitled to object or otherwise appear and, further provided, that  
 20 no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement  
 21 Class Member complies with the requirements of this Order pertaining to objections, which are  
 22 described below.

### 23 Administration

24 9. Analytics Consulting, LLC ("Analytics") is appointed as the Settlement  
 25 Administrator, with responsibility for Claims Administration, the Notice Program, and all other  
 26 obligations of the Claims Administrator, as set forth in the Settlement. The Settlement  
 27

1 Administrator's fees, as well as all other costs and expenses associated with notice and administration,  
2 will be paid by Eddie Bauer, as provided in the Settlement.

### 3 Notice to the Class

4 10. The Notice Program set forth in the Settlement, including the forms of Notice and  
5 Claim Form attached as exhibits to the Settlement, satisfy the requirements of Rule 23 and due process  
6 and thus are approved. Non-material modifications to the exhibits may be made without further order  
7 of the Court. The Settlement Administrator is directed to carry out the Notice Program in  
8 conformance with the Settlement and to perform all other tasks that the Settlement requires.

9 11. The Court finds that the form, content, and method of giving notice to the Settlement  
10 Class, as described in the Settlement and exhibits: (a) constitute the best practicable notice to the  
11 Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class  
12 Members of the pendency of the action, the terms of the proposed Settlement, and their rights under  
13 the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those  
14 persons entitled to receive notice; and (d) satisfy the requirements of Rule 23, the constitutional  
15 requirement of due process, and any other legal requirements. The Court further finds that the Notice  
16 is written in plain language, uses simple terminology, and is designed to be readily understandable  
17 by Settlement Class Members.

### 18 Exclusions from the Class

19 12. Any Settlement Class Member that wishes to be excluded from the Settlement Class  
20 must mail a written notification of the intent to exclude itself to the Settlement Administrator, Class  
21 Counsel, and Eddie Bauer's counsel at the addresses provided in the Notice, postmarked no later than  
22 \_\_\_\_\_ [90 days after the date of this Order] (the "Opt-Out Deadline") and sent  
23 via first class postage pre-paid U.S. mail. The written notification must include the name of this  
24 Litigation (*Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356-JLR (W.D. Wash.)); the  
25 full name, address, and telephone number of the Settlement Class Member; the name, address, email  
26 address, telephone number, position, and signature of the individual who is acting on behalf of the  
27 Settlement Class Member; the words "Request for Exclusion" at the top of the document, or a

1 statement in the body of the document requesting exclusion from the Settlement; and the total number  
2 of payment cards issued by the Settlement Class Member that were identified as having been at risk  
3 as a result of the Cyber Attack in any alerts or similar documents by Visa, MasterCard, Discover, and  
4 JCB. If the Settlement Class Member fails to provide all of the required information on or before the  
5 deadlines specified in the Settlement, and fails to cure any deficiency within the time allowed in the  
6 Settlement, then its attempt to opt-out shall be invalid and have no legal effect, and the Settlement  
7 Class Member shall be bound by the Settlement, including the releases, if finally approved.

8 13. All Settlement Class Members who submit valid and timely notices of their intent to  
9 be excluded from the Settlement shall not receive any benefits of or be bound by the terms of the  
10 Settlement. Any Settlement Class Member that does not timely and validly exclude itself from the  
11 Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Settlement  
12 Class Member that has not submitted a timely, valid written notice of exclusion from the Settlement  
13 (in accordance with the requirements of the Settlement) shall be bound by all subsequent proceedings,  
14 orders, and judgments in this matter, the Settlement, including, but not limited to, the releases set  
15 forth in the Settlement, and the Final Approval Order and Judgment.

16 14. The Settlement Administrator shall provide the Parties with copies of all opt-out  
17 notifications promptly upon receipt, and a final list of all that have timely and validly excluded  
18 themselves from the Settlement Class in accordance with the terms of the Settlement, which Class  
19 Counsel may move to file under seal with the Court no later than **10 days** prior to the Final Approval  
20 Hearing.

### 21 **Objections to the Settlement**

22 15. A Settlement Class Member that complies with the requirements of this Order may  
23 object to the Settlement, the request of Class Counsel for an award of attorneys' fees, costs, and  
24 expenses, and/or the request for a Service Award.

25 16. No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other  
26 documents submitted by any Settlement Class Member shall be received and considered by the Court,  
27 unless the objection is: (a) electronically filed with the Court by the Objection Deadline; or (b) mailed

1 first-class postage prepaid to the Clerk of Court, Class Counsel, and Eddie Bauer's counsel at the  
2 addresses listed in the Notice and postmarked by no later than the Objection Deadline, which shall  
3 be \_\_\_\_\_ [114 days after the date of this Order], as specified in the Notice.  
4 Objections shall not exceed 12 pages. For the objection to be considered by the Court, the objection  
5 shall set forth:

6 a. the name of the Litigation (*Veridian Credit Union v. Eddie Bauer LLC*, No.  
7 2:17-cv-00356-JLR (W.D. Wash.));

8 b. the full name of the objector and the full name, address, email address, and  
9 telephone number of the person acting on its behalf;

10 c. an explanation of the basis upon which the objector claims to be a Settlement  
11 Class Member;

12 d. whether the objection applies only to the objector, a specific subset of the  
13 Settlement Class, or the entire Settlement Class;

14 e. all grounds for the objection stated, with specificity, accompanied by any legal  
15 support for the objection;

16 f. the identity of all counsel who represent the objector, including any former or  
17 current counsel who may be entitled to compensation for any reason related to the objection  
18 to the Settlement, Class Counsel's request for attorneys' fees, costs, and expenses, or the  
19 application for a Service Award;

20 g. the identity of all representatives (including counsel representing the objector)  
21 who will appear at the Final Approval Hearing;

22 h. the number of times in which the objector has objected to a class action  
23 settlement within the five years preceding the date that the objector files the objection, the  
24 caption of each case in which the objector has made such objection, and a copy of any orders  
25 related to or ruling upon the objector's prior such objections that were issued by the trial and  
26 appellate courts in each listed case;

1           i.       the number of times in which the objector's counsel and/or counsel's law firm  
2       have objected to a class action settlement within the five years preceding the date that the  
3       objector files the objection, the caption of each case in which counsel or the firm has made  
4       such objection, and a copy of any orders related to or ruling upon the counsel's or the firm's  
5       prior such objections that were issued by the trial and appellate courts in each listed case;

6           j.       if the objector is represented by an attorney who intends to seek fees and  
7       expenses from anyone other than the objectors he or she represents, the objection should also  
8       include: (i) a description of the attorney's legal background and prior experience in connection  
9       with class action litigation; (ii) the amount of fees sought by the attorney for representing the  
10      objector and the factual and legal justification for the fees being sought; (iii) a statement  
11      regarding whether the fees being sought are calculated on the basis of a lodestar, contingency,  
12      or other method; (iv) the number of hours already spent by the attorney and an estimate of the  
13      hours to be spent in the future; and (v) the attorney's hourly rate;

14          k.       any and all agreements that relate to the objection or the process of objecting,  
15      whether written or verbal, between the objector or objector's counsel and any other person or  
16      entity;

17          l.       a description of all evidence to be presented at the Final Approval Hearing in  
18      support of the objection, including a list of any witnesses, a summary of the expected  
19      testimony from each witness, and a copy of any documents or other non-oral material to be  
20      presented;

21          m.       a statement identifying whether the objector intends to personally appear  
22      and/or testify at the Final Approval Hearing; and

23          n.       the objector's signature on the written objection (an attorney's signature is not  
24      sufficient).

25          17.      In addition, any Settlement Class Member that objects to the proposed Settlement must  
26      make itself available to be deposed regarding the grounds for its objection and must provide, along  
27

1 with its objection, the dates when the objector will be available to be deposed during the period from  
 2 when the objection is filed through the date **seven days** before the Final Approval Hearing.

3 18. Any Settlement Class Member that fails to comply with the provisions in this Order  
 4 will waive and forfeit any and all rights it may have to object, and shall be bound by all the terms of  
 5 the Settlement, this Order, and by all proceedings, orders, and judgments, including, but not limited  
 6 to, the releases in the Settlement, if finally approved. Any Settlement Class Member who both objects  
 7 to the Settlement and opts-out will be deemed to have opted-out and the objection shall be deemed  
 8 null and void.

### 9 **Claims Process and Distribution Plan**

10 19. The Settlement establishes a process for assessing and determining the validity and  
 11 value of claims and a methodology for paying Settlement Class Members that submit a timely, valid  
 12 Claim Form. The Court preliminarily approves this process.

13 20. Settlement Class Members that qualify for and wish to submit a Claim Form shall do  
 14 so in accordance with the requirements and procedures specified in the Notice and Claim Form. If  
 15 the Settlement is finally approved, all Settlement Class Members that qualify for any benefit under  
 16 the Settlement, but fail to submit a claim in accordance with the requirements and procedures  
 17 specified in the Notice and Claim Form, shall be forever barred from receiving any such benefit, but  
 18 will, in all other respects, be subject to and bound by the provisions of the Settlement, including the  
 19 releases included in the Settlement and Final Approval Order and Judgment.

### 20 **Termination of the Settlement and Use of this Order**

21 21. This Order shall become null and void and shall be without prejudice to the rights of  
 22 the Parties, all of which shall be restored to their respective positions existing immediately before this  
 23 Court entered this Order, if the Settlement is not finally approved by the Court or is terminated in  
 24 accordance with the terms of the Settlement. In such event, the Settlement shall become null and  
 25 void and be of no further force and effect, and neither the Settlement (including any Settlement-  
 26 related filings) nor the Court's orders, including this Order, relating to the Settlement shall be used  
 27 or referred to for any purpose whatsoever.

22. If the Settlement is not finally approved or there is no Effective Date under the terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or used as an admission, concession, or declaration by or against Eddie Bauer of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against any Settlement Class Representative or any other Settlement Class Member that its claims lack merit or that the relief requested is inappropriate, improper, and unavailable; and shall not constitute a waiver by any party of any defense (including, without limitation, any defense to class certification) or claims it may have in this Litigation or in any other lawsuit.

#### **Stay of Proceedings**

23. Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

#### **Continuance of Final Approval Hearing**

24. The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

#### **Actions by Settlement Class Members**

25. The Court stays and enjoins, pending Final Approval of the Settlement, any actions, lawsuits, or other proceedings brought by Settlement Class Members against Eddie Bauer in relation to the Cyber Attack.

#### **Summary of Deadlines**

26. The Settlement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include, but are not limited to, the following:

- Notice Deadline: [30 days after entry of this Order];
- Opt-Out Deadline: [90 days after entry of this Order];

- Claims Deadline: [120 days after entry of this Order];
- Application for Attorneys' Fees and Expenses and Service Award ("Fee Application"): [100 days after entry of this Order];
- Motion for Final Approval of the Settlement ("Final Approval Motion"): [100 days after entry of this Order];
- Objection Deadline: [14 days after the Fee Application and Final Approval Motion are filed (or 114 days after entry of this Order)];
- Replies in Support of Final Approval and Fee Motion: [28 days after the Fee Application and Final Approval Motion are filed (or 128 days after entry of this Order)]; and
- Final Approval Hearing: [a date to be set by the Court no earlier than 135 days after entry of this Order].

IT IS SO ORDERED.

---

JAMES L. ROBART  
UNITED STATES DISTRICT JUDGE

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019

Presented by:

TOUSLEY BRAIN STEPHENS PLLC

By: /s/ Kim D. Stephens

Kim D. Stephens, WSBA #11984  
Chase C. Alvord, WSBA #26080  
1700 Seventh Avenue, Suite 2200  
Seattle, Washington 98101  
Telephone: (206) 682-5600  
Facsimile: (206) 682-2992  
kstephens@tousley.com  
calvord@tousley.com

Joseph P. Guglielmo (*pro hac vice*)  
SCOTT+SCOTT ATTORNEYS AT LAW LLP

1 The Helmsley Building  
2 230 Park Avenue, 17th Floor  
3 New York, NY 10169  
4 Telephone: (212) 223-6444  
5 Facsimile: (212) 223-6334  
6 jguglielmo@scott-scott.com

7 Erin G. Comite (*pro hac vice*)  
8 SCOTT+SCOTT ATTORNEYS AT LAW LLP  
9 156 South Main Street  
10 P.O. Box 192  
11 Colchester, CT 06415  
12 Telephone: (860) 537-5537  
13 Facsimile: (860) 537-4432  
14 ecomite@scott-scott.com

15 Gary F. Lynch (*pro hac vice*)  
16 Kevin W. Tucker (*pro hac vice*)  
17 CARLSON LYNCH LLP  
18 1133 Penn Avenue, 5th floor  
19 Pittsburg, PA 15212  
20 Telephone: (412) 322-9243  
21 Facsimile: (412) 231-0246  
22 glynch@carlsonlynch.com  
23 ktucker@carlsonlynch.com

24 Karen H. Riebel (*pro hac vice*)  
25 Kate Baxter-Kauf (*pro hac vice*)  
26 LOCKRIDGE GRINDAL NAUEN P.L.L.P.  
27 100 Washington Avenue S., Suite 2200  
Minneapolis, MN 55401  
Telephone: (612) 339-6900  
Facsimile: (612) 339-0981  
khriebel@locklaw.com  
kmbaxter@locklaw.com

Arthur M. Murray (*pro hac vice*)  
MURRAY LAW FIRM  
650 Poydras St., Suite 2150  
New Orleans, LA 70130  
Telephone: (504) 525-8100  
Facsimile: (504) 284-5249  
amurray@murray-lawfirm.com

Brian C. Gudmundson (*pro hac vice*)  
ZIMMERMAN REED, LLP  
1100 IDS Center, 80 South 8<sup>th</sup> St.  
Minneapolis, MN 55402  
Telephone: (612) 341-0400  
Facsimile: (612) 341-0844  
brian.gudmundson@zimmreed.com

Bryan L. Bleichner (*pro hac vice*)  
CHESTNUT CAMBRONNE PA

1 17 Washington Avenue North, Suite 300  
2 Minneapolis, MN 55401  
3 Telephone: (612) 339-7300  
4 Facsimile: (612) 336-2921  
5 bbleichner@chestnutcambronne.com

6 *Attorneys for Plaintiff Veridian Credit Union*  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

## **EXHIBIT 5**

Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VERIDIAN CREDIT UNION, on behalf of  
itself and a class of similarly situated financial  
institutions,

Plaintiff,

v.

EDDIE BAUER LLC,

Defendant.

NO. 2:17-cv-00356-JLR

[PROPOSED] FINAL APPROVAL  
ORDER AND JUDGMENT

On \_\_\_\_\_ [DATE], this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) (ECF No.\_\_\_\_) of the Settlement between Plaintiff Veridian Credit Union (“Plaintiff” or “Veridian”), on its own behalf and on behalf of the Settlement Class, and Defendant Eddie Bauer, LLC (“Eddie Bauer” or “Defendant”), as memorialized in Exhibit XX (ECF No. \_\_) to Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement;<sup>1</sup>

On \_\_\_\_\_ [DATE], pursuant to the notice requirements set forth in the Settlement and Preliminary Approval Order, the Settlement Class was apprised of the nature and pendency of the Litigation, the terms of the Settlement, and their rights to request exclusion, object, and/or appear at the Final Approval Hearing;

On \_\_\_\_\_ [DATE], Plaintiff filed its Motion for Final Approval of the Class Action Settlement (the “Final Approval Motion”) and accompanying Memorandum of Law, with supporting exhibits, and Class Counsel filed their Application for Attorneys’ Fees and Expenses

<sup>1</sup> The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as those defined in the Settlement, except as may otherwise be indicated.

1 and a Service Award and accompanying Memorandum of Law, with supporting exhibits (the “Fee  
2 Application”);

3 On \_\_\_\_\_ [DATE], the Court held a Final Approval Hearing to determine,  
4 *inter alia*: (1) whether the Settlement is fair, reasonable, and adequate; and (2) whether judgment  
5 should be entered dismissing all claims in the Complaint with prejudice. Prior to the Final Approval  
6 Hearing, Class Counsel filed a declaration from the Settlement Administrator confirming that the  
7 Notice Program was completed in accordance with the Parties’ instructions and Preliminary Approval  
8 Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their  
9 right to appear at the Final Approval Hearing in support of, or in opposition to, the proposed  
10 Settlement, the award of attorneys’ fees, costs, and expenses, and the payment of a Service Award.

11 Having given an opportunity to be heard to all requesting persons in accordance with the  
12 Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for Eddie  
13 Bauer, having reviewed all of the submissions presented with respect to the proposed Settlement,  
14 having determined that the Settlement is fair, adequate, and reasonable, having considered the  
15 application made by Class Counsel for attorneys’ fees, costs, and expenses and a Service Award, and  
16 having reviewed the materials in support thereof, and good cause appearing in the record, Plaintiff’s  
17 Final Approval Motion is **GRANTED** and Class Counsel’s Fee Application is **GRANTED**, and:

18 **IT IS HEREBY ORDERED THAT:**

19 1. The Court has jurisdiction over the subject matter of this action and over all claims  
20 raised therein and all Parties thereto, including the Settlement Class. The Court also has personal  
21 jurisdiction over the Parties and the Settlement Class Members.

22 2. The Settlement was entered into in good faith following arm’s-length negotiations  
23 before an experienced mediator and is non-collusive.

24 3. The Settlement is, in all respects, fair, reasonable, and adequate, is in the best interests  
25 of the Settlement Class, satisfies Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”), and is  
26 therefore approved. The Court finds that the Parties faced significant risks, expenses, delays, and  
27 uncertainties, including as to the outcome, of continued litigation of this complex matter, which

1 further supports the Court's finding that the Settlement is fair, reasonable, adequate and in the best  
2 interests of the Settlement Class Members. The Court finds that the uncertainties of continued  
3 litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in  
4 favor of approval of the Settlement.

5 4. This Court grants final approval of the Settlement, including, but not limited to, the  
6 releases in the Settlement and the plans for distribution of the Settlement relief. The Court finds that  
7 the Settlement is, in all respects, fair, reasonable, and in the best interest of the Settlement Class.  
8 Therefore, all Settlement Class Members, who have not opted-out, are bound by the Settlement and  
9 this Final Approval Order and Judgment.

10 5. The Settlement and every term and provision thereof shall be deemed incorporated  
11 herein, as if explicitly set forth herein, and shall have the full force of an order of this Court.

12 6. The Parties shall effectuate the Settlement in accordance with its terms.

13 **OBJECTIONS AND OPT-OUTS**

14 7. \_\_\_\_\_ objections were filed by Settlement Class Members. The Court has considered  
15 all objections and finds the objections do not counsel against Settlement approval, and the objections  
16 are hereby overruled in all respects.

17 8. All persons and entities who have not objected to the Settlement in the manner  
18 provided in the Settlement are deemed to have waived any objections to the Settlement, including,  
19 but not limited to, by appeal, collateral attack, or otherwise.

20 9. A list of those putative Settlement Class Members who have timely and validly elected  
21 to opt-out of the Settlement and Settlement Class, in accordance with the requirements in the  
22 Settlement (the "Opt-Out Members"), has been submitted to the Court in the Declaration of  
23 \_\_\_\_\_, filed in advance of the Final Approval Hearing. Such list is attached as Exhibit  
24 A to this Order. The persons and/or entities listed in Exhibit A are not bound by the Settlement, this  
25 Final Approval Order and Judgment, and are not entitled to any of the benefits under the Settlement.  
26 Opt-Out Members listed in Exhibit A shall be deemed not to be Releasing Parties.

**CLASS CERTIFICATION**

10. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby finally certifies for settlement purposes only the following Settlement Class:

All banks, credit unions, financial institutions, and other entities in the United States (including its Territories and the District of Columbia) that issued Alerted on Payment Cards. Excluded from the Settlement Class is the judge presiding over this matter and any members of his judicial staff, Eddie Bauer, and persons who timely and validly request exclusion from the Settlement Class.

11. The Court determines that for settlement purposes the Settlement Class meets all the requirements of Fed. R. Civ. P. 23(a) and (b)(3), namely that the Settlement Class is so numerous that joinder of all members is impractical; there are common issues of law and fact; the claims of the class representative are typical of absent class members; the Settlement Class Representative will fairly and adequately protect the interests of the class, as they have no interests antagonistic to or in conflict with the class, and have retained experienced and competent counsel to prosecute this matter; common issues predominate over any individual issues; and a class action is the superior means of adjudicating the controversy.

12. The Court grants final approval to the appointment of Plaintiff as the Settlement Class Representative. The Court concludes that the Settlement Class Representative has fairly and adequately represented the Settlement Class and will continue to do so.

13. The Court grants final approval to the appointment, pursuant to Fed. R. Civ. P. 23(g), of Joseph P. Guglielmo of Scott+Scott Attorneys at Law LLP and Gary F. Lynch of Carlson Lynch LLP as Class Counsel. The Court concludes that Class Counsel have adequately represented the Settlement Class and will continue to do so.

**NOTICE TO THE SETTLEMENT CLASS**

14. The Court finds that the Notice Program, as set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied Fed. R. Civ. P. 23(c)(2), was the best notice practicable under the circumstances, was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class of the pendency of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement, their right

1 to exclude themselves, their right to object to the Settlement and to appear at the Final Approval  
2 Hearing, and satisfied the other requirements of the Federal Rules of Civil Procedure, the United  
3 States Constitution, and all other applicable laws.

4 15. The Court finds that Eddie Bauer has fully complied with the notice requirements of  
5 the Class Action Fairness Act of 2005, 28 U.S.C. §1715.

6 16. The Settlement Administrator's fees, as well as all other costs and expenses associated  
7 with notice and administration, will continue to be paid by Eddie Bauer as provided in the Settlement.

8 **AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD**

9 17. The Court has considered Class Counsel's Fee Application.

10 18. Pursuant to Fed. R. Civ. P. 23(h), and relevant Ninth Circuit authority, the Court  
11 awards Class Counsel \$\_\_\_\_\_ as an award of reasonable attorneys' fees, costs, and  
12 expenses to be paid in accordance with the Settlement, and the Court finds this amount of fees, costs,  
13 and expenses to be fair and reasonable. This award of attorneys' fees, costs, and expenses, and any  
14 interest earned thereon, shall be paid in accordance with the Settlement. This award of attorneys'  
15 fees, costs, and expenses is independent of the Court's consideration of the fairness, reasonableness,  
16 and adequacy of the Settlement.

17 19. The Court grants Class Counsel's request for a Service Award and awards \$10,000 to  
18 Plaintiff. The Court finds that this payment is justified by Plaintiff's service to the Settlement Class.  
19 This Service Award shall be paid by Eddie Bauer in accordance with the Settlement.

20 **OTHER PROVISIONS**

21 20. The Parties to the Settlement shall carry out their respective obligations thereunder.

22 21. Within the time period set forth in the Settlement, the relief provided for in the  
23 Settlement shall be made available to the Settlement Class Members submitting valid Claim Forms,  
24 pursuant to the terms and conditions of the Settlement.

25 22. As of the Effective Date, the Releasing Parties, each on behalf of itself and any  
26 predecessors, successors, or assigns, shall automatically be deemed to have fully, completely, finally,  
27 irrevocably, and forever released and discharged Defendant's Released Persons of and from any and

all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown (including Unknown Claims (defined below)), existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the Cyber Attack, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of: (i) Eddie Bauer's information security policies and practices; (ii) the allegations, facts, and/or circumstances described in the Litigation and/or Complaint; (iii) Eddie Bauer's response to and notices about the Cyber Attack; (iv) the fraudulent use of any Alerted on Payment Cards; (v) the cancellation and reissuance of any Alerted on Payment Cards; and (vi) any expenses incurred investigating, responding to, or mitigating potential damage from the theft or illegal use of Alerted on Payment Cards or information relating to such cards (the "Released Claims").

23. For the avoidance of doubt, the Released Claims include, without limitation, any claims, causes of actions, remedies, or damages that were or could have been asserted in the Litigation, and also include, without limitation, any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation: those arising under state or federal law of the United States (including, without limitation, any causes of action under the California Business & Professions Code §17200, *et seq.*, California Civil Code §1750, *et seq.*, Cal. Civ. Code §1798.80, *et seq.*, Cal. Civ. Code §56.10, *et seq.*, and any similar statutes or data breach notification statutes in effect in the United States or in any states in the United States); causes of action under the common or civil laws of any state in the United States, including, but not limited to, unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or any states in the United States; any statutory claims under state or federal law; and also including, but not

1 limited to, any and all claims in any state or federal court of the United States for damages, injunctive  
2 relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-  
3 judgment interest, credit or financial account monitoring services, identity theft insurance, the  
4 creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver,  
5 and any other form of relief.

6 24. As of the Effective Date, Defendant's Released Persons will be deemed to have  
7 completely released and forever discharged the Releasing Parties and Plaintiff's Released Persons  
8 from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts,  
9 liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or  
10 demands of any kind whatsoever, whether known or unknown, existing or potential, or suspected or  
11 unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or  
12 unknown claims, which they have or may claim now or in the future to have, relating to the institution,  
13 prosecution, or settlement of the Litigation. For the avoidance of doubt, Defendant's Released  
14 Persons' release, as set forth in this ¶24, does not include entities that do not meet the definition of  
15 either Releasing Parties or Plaintiff's Released Persons.

16 25. The Settlement Class Representative and Settlement Class Members are enjoined from  
17 prosecuting any Released Claims in any proceeding against any of Defendant's Released Persons or  
18 prosecuting any claim based on any actions taken by any of Defendant's Released Persons that are  
19 authorized or required by this Settlement or the Final Approval Order and Judgment. It is further  
20 agreed that the Settlement and/or this Final Approval Order and Judgment may be pleaded as a  
21 complete defense to any proceeding subject to this section.

22 26. "Unknown Claims" means any of the Released Claims that any Settlement Class  
23 Member, including the Settlement Class Representative, does not know or suspect to exist in its favor  
24 at the time of the release of Defendant's Released Persons that, if known by it, might have affected  
25 its settlement with, and release of, Defendant's Released Persons, or might have affected its decision  
26 not to object to and/or to participate in this Settlement. With respect to any and all Released Claims,  
27 the Parties stipulate and agree that upon the Effective Date, the Settlement Class Representative

expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, waived the provisions, rights, and benefits conferred by Cal. Civ. Code §1542 to the extent applicable, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. §28-1-1602; North Dakota Cent. Code §9-13-02; and South Dakota Codified Laws §20-7-11), which is similar, comparable, or equivalent to Cal. Civ. Code §1542, which provides:

***A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.***

[Emphasis added.] Settlement Class Members, including the Settlement Class Representative, and any of them, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true, with respect to the subject matter of the Released Claims, but the Settlement Class Representative expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

27. This Final Approval Order and Judgment and the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement, are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Eddie Bauer of any claim, fact alleged in the Litigation, fault, wrongdoing, violation of law, or liability of any kind on the part of Eddie Bauer or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Litigation.

1           28.     This Final Approval Order and Judgment, the Settlement, and all acts, statements,  
2 documents, and proceedings relating to the Settlement shall not be offered, received, or admissible in  
3 evidence in any action or proceeding, or be used in any way as an admission, concession, or evidence  
4 of any liability or wrongdoing of any nature, or that Plaintiff, any Settlement Class Member, or any  
5 other person has suffered any damage; ***provided, however,*** that nothing in the foregoing, Settlement,  
6 or this Final Approval Order and Judgment shall be interpreted to prohibit the use of the Settlement  
7 or this Final Approval Order and Judgment in a proceeding to consummate or enforce the Settlement  
8 or this Final Approval Order and Judgment (including all releases in the Settlement and Final  
9 Approval Order and Judgment), or to defend against the assertion of any Released Claims in any  
10 other proceeding, or as otherwise required by law.

11           29.     The Settlement's terms shall be forever binding on, and shall have *res judicata* and  
12 preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims (and  
13 other prohibitions set forth in this Final Approval Order and Judgment) that are brought, initiated, or  
14 maintained by, or on behalf of, any Settlement Class Member, who is not an Opt-Out Member, or  
15 any other person subject to the provisions of this Final Approval Order and Judgment.

16           30.     The Court hereby dismisses the Litigation and Complaint and all claims therein on the  
17 merits and with prejudice, without fees or costs to any party, except as provided in this Final Approval  
18 Order and Judgment.

19           31.     Consistent with the Settlement, if the Effective Date, as defined in the Settlement  
20 Agreement, does not occur for any reason, this Final Approval Order and Judgment and the  
21 Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever;  
22 the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement,  
23 the Preliminary Approval Order, and this Final Approval Order and Judgment shall cease to be of  
24 any force and effect; and the Parties shall return to the *status quo ante* in the Litigation, as if the  
25 Parties had not entered into the Settlement. In such an event, the Parties shall be restored to their  
26 respective positions in the Litigation as if the Settlement Agreement had never been entered into (and  
27

1 without prejudice to any of the Parties' respective positions on the issue of class certification or any  
2 other issue).

3 32. Pursuant to the All Writs Act, 28 U.S.C. §1651, this Court shall retain the authority to  
4 issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

5 33. Without affecting the finality of this Final Approval Order and Judgment, the Court  
6 will retain jurisdiction over the subject matter and the Parties, with respect to the interpretation and  
7 implementation of the Settlement for all purposes, including enforcement of its terms at the request  
8 of any party and resolution of any disputes that may arise, relating in any way to and arising from the  
9 implementation of the Settlement or this Final Approval Order and Judgment.

10 IT IS SO ORDERED.

11  
12 \_\_\_\_\_  
13 JAMES L. ROBERT  
UNITED STATES DISTRICT JUDGE

14 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019

15  
16 Presented by:

17 TOUSLEY BRAIN STEPHENS PLLC

18 By: /s/ Kim D. Stephens

19 Kim D. Stephens, WSBA #11984  
20 Chase C. Alvord, WSBA #26080  
21 1700 Seventh Avenue, Suite 2200  
22 Seattle, Washington 98101  
23 Telephone: (206) 682-5600  
Facsimile: (206) 682-2992  
kstephens@tousley.com  
calvord@tousley.com

24 Joseph P. Guglielmo (*pro hac vice*)  
SCOTT+SCOTT ATTORNEYS AT LAW LLP  
25 The Helmsley Building  
230 Park Avenue, 17th Floor  
26 New York, NY 10169  
Telephone: (212) 223-6444  
27 Facsimile: (212) 223-6334  
jguglielmo@scott-scott.com

1 Erin G. Comite (*pro hac vice*)  
2 SCOTT+SCOTT ATTORNEYS AT LAW LLP  
3 156 South Main Street  
4 P.O. Box 192  
5 Colchester, CT 06415  
6 Telephone: (860) 537-5537  
7 Facsimile: (860) 537-4432  
8 ecomite@scott-scott.com

9 Gary F. Lynch (*pro hac vice*)  
10 Kevin W. Tucker (*pro hac vice*)  
11 CARLSON LYNCH LLP  
12 1133 Penn Avenue, 5th floor  
13 Pittsburg, PA 15212  
14 Telephone: (412) 322-9243  
15 Facsimile: (412) 231-0246  
16 glynch@carlsonlynch.com  
17 ktucker@carlsonlynch.com

18 Karen H. Riebel (*pro hac vice*)  
19 Kate Baxter-Kauf (*pro hac vice*)  
20 LOCKRIDGE GRINDAL NAUEN P.L.L.P.  
21 100 Washington Avenue S., Suite 2200  
22 Minneapolis, MN 55401  
23 Telephone: (612) 339-6900  
24 Facsimile: (612) 339-0981  
25 khriebel@locklaw.com  
26 kmbaxter@locklaw.com

27 Arthur M. Murray (*pro hac vice*)  
MURRAY LAW FIRM  
650 Poydras St., Suite 2150  
New Orleans, LA 70130  
Telephone: (504) 525-8100  
Facsimile: (504) 284-5249  
amurray@murray-lawfirm.com

Brian C. Gudmundson (*pro hac vice*)  
ZIMMERMAN REED, LLP  
1100 IDS Center, 80 South 8<sup>th</sup> St.  
Minneapolis, MN 55402  
Telephone: (612) 341-0400  
Facsimile: (612) 341-0844  
brian.gudmundson@zimmreed.com

Bryan L. Bleichner (*pro hac vice*)  
CHESTNUT CAMBRONNE PA  
17 Washington Avenue North, Suite 300  
Minneapolis, MN 55401  
Telephone: (612) 339-7300  
Facsimile: (612) 336-2921  
bbleichner@chestnutcambronne.com

***Attorneys for Plaintiff Veridian Credit Union***

## Exhibit B

# CARLSON LYNCH

**GARY F. LYNCH | PARTNER**



1133 Penn Avenue  
5th Floor  
Pittsburgh, PA 15222  
T. (412) 322-9243  
[glynch@carlsonlynch.com](mailto:glynch@carlsonlynch.com)

## **Practice Emphasis**

Class Actions  
Multidistrict Litigation  
Data Security & Privacy  
Consumer Protection  
Financial Fraud  
Employment  
Wage & Hour

## **Education**

University of Pittsburgh  
School of Law, J.D., 1989  
  
The Pennsylvania State  
University, B.S., 1986

Gary Lynch prosecutes consumer protection matters with expertise in data breach and privacy, fraudulent lending, and employment law. Gary has been appointed to leadership roles in numerous contested, high profile class actions and coordinated multidistrict litigation proceedings. He is currently appointed as Co-Lead counsel in the complex data breach cases *In re Equifax, Inc. Customer Data Security Breach Litigation* and *First Choice Federal Credit Union v. The Wendy's Company*, and as Co-Lead counsel representing a class of student loan borrowers in *In re: FedLoan Student Loan Servicing Litigation*. He has recovered hundreds of millions of dollars for the clients and classes he represents and has negotiated groundbreaking settlements that resulted in meaningful reforms to business and industry practices. With nearly thirty years of experience, Gary has developed a distinguished reputation with his peers and the judiciary for his ability to work efficiently and cooperatively with co-counsel, and professionally with opposing counsel in class action litigation.

## **From the Judiciary:**

*"The Court is well familiar with the Carlson Lynch firm given their appearances here in court. The Court is also familiar directly with the abilities of both Mr. Carlson and Mr. Lynch as in my days of private practice, I think I litigated against both of them. I know from their representation of individuals here in this court, as well as classes here in this court, the firm provides exemplary service, very solid work ready product throughout the life of this case as in all of their cases."* – Hon. Nora Barry Fischer, *White v. 1 Person at a Time, LLC* (W.D. Pa.).

*"Consistent with the underlying purpose of Fed. R. Civ. P. 23, plaintiffs' counsel [(Gary Lynch and Bruce Carlson)] have achieved, with utmost efficiency, a quality result for the entire class and are commended for the diligence and effective advocacy they have displayed on behalf of their clients."* – Hon. Francis X. Caiazza, *Gualano v. Abercrombie & Fitch Stores, Inc.* (W.D. Pa.).

*"Class counsel have abundant experience as lead counsel in consumer class action litigation. Indeed, class counsel have frequently appeared before this Court. Other courts have routinely recognized class counsels' adequacy. . . . This Court readily agrees with these other courts, and finds that Bruce Carlson and Gary Lynch are more than adequate counsel, and indeed are capable and diligent class action attorneys."* – Hon. Robert Horgos, *In re Wireless Phone Equipment Replacement Insurance Litigation* (C.P. Allegheny County, Pennsylvania).

**Awards & Honors**

*Super Lawyer®* for Class Action and Mass Torts, 2014 – Present

*AV Preeminent®* Peer Review Rated by Martindale-Hubbell

U.S. District Court for the W.D. Pa., *Local Rules Advisory Committee Member*

**Admissions**

Pennsylvania, 1989  
New York, 2018

Third Circuit, 1994  
Ninth Circuit, 2002  
Eleventh Circuit, 2002  
Seventh Circuit, 2010  
Sixth Circuit, 2011  
First Circuit, 2012  
Fifth Circuit, 2013  
Second Circuit, 2015  
Fourth Circuit, 2017

W.D. Pa., 1989  
M.D. Pa., 2006  
E.D. Pa., 2007  
N.D. Oh., 2000  
S.D. Oh., 2006  
C.D. Ill., 2010  
N.D. Ill., 2010  
E.D. Mich., 2010  
D. Mary., 2011  
W.D.N.Y., 2011  
W.D. Mich., 2013  
E.D. Wisc., 2016  
D. Col., 2017

**Representative Experience**

**Co-Lead Counsel**, *In re Equifax, Inc. Customer Data Security Breach Litig.*, MDL 2800 (N.D. Ga.) – In February 2018, in a heavily contested leadership fight, Chief United States District Judge Thomas W. Thrash, Jr. appointed Gary to co-lead a streamlined leadership structure consisting of co-lead counsel, an eight-member steering committee, and co-liaison counsel in multidistrict litigation involving the largest and potentially most damaging data breach in history.

**Co-Lead Counsel**, *First Choice Federal Credit Union v. The Wendy's Company et al.*, (W.D. Pa.) – Gary was appointed co-lead counsel in a group of consolidated cases brought by financial institutions against the Wendy's fast food chain in the aftermath of a late 2015 data breach that exposed customers' credit card information. Magistrate Judge Maureen P. Kelly recommended the denial of Wendy's motion to dismiss in February 2017, and that report and recommendation was adopted by District Judge Nora Barry Fischer in March 2017. A proposed class action settlement received preliminary approval in February 2019.

**Co-Lead Counsel**, *In re: The Home Depot, Inc. Customer Data Security Breach Litigation*, (N.D. Ga.) – Gary served as Co-Lead Counsel in this landmark data breach case, which found that retailers have a duty to not “turn a blind eye to the ever-increasing risk of cyberattacks.” In September 2017, the Court granted final approval to a comprehensive settlement that provides over \$27 million in relief to the class.

**Co-Lead Counsel**, *In re: FedLoan Student Loan Servicing Litig.*, (E.D. Pa.) – In October 2018, Gary was appointed co-lead plaintiffs' counsel in these consolidated MDL cases. The plaintiffs and proposed class members are federal student loan borrowers and grant recipients who allege that mismanagement on the part of loan servicers caused widespread financial harm. The case is still in at the early pretrial stage.

**Lead Counsel**, *Dittman v. UPMC*, 196 A.3d 1036 (Pa. 2018) – Gary successfully argued an appeal to the Supreme Court of Pennsylvania leading to a landmark decision regarding the viability of common law negligence claims in the wake of a data breach. The Court held that employers owe a duty of reasonable care to employees when collecting and storing employees' sensitive personal and financial data. The opinion is a watershed moment in data breach litigation, as it is the first occasion any state's highest court has directly addressed whether employers that collect employees' personal information have a duty to reasonably safeguard that information. The case is currently pending in the trial court after remand.

**Co-Class Counsel/Lead Trial Counsel**, *Verma v. 3001 Castor Inc.*, (E.D. Pa.) – In March 2018, Gary, as lead trial counsel, won a \$4.59 million jury verdict in a certified class action presided over by Senior Judge Anita B. Brody. Gary represented a class of misclassified workers at a Philadelphia nightclub for claims under the FLSA and Pennsylvania Minimum Wage Act.

**Tri-Lead Counsel, *CitiMortgage SCRA Litigation*, (S.D.N.Y.)** – After nearly four years of class litigation, Gary and his team secured a total recovery of \$38.2 million for a class of military servicemembers whose homes CitiMortgage foreclosed upon while they were deployed on active duty, in violation of the Servicemembers Civil Relief Act. This favorable resolution stemmed, in part, from counsel’s cooperation in providing joint status reports to the court on a regular basis.

**Co-Lead Counsel/Trial Counsel, *In re Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee Secondary Mortgage Loan Litigation*, (W.D. Pa./3d Cir.)**. Gary was co-counsel representing a national class of secondary mortgage borrowers under the Real Estate Settlement Procedures Act (“RESPA”). The Third Circuit affirmed class certification in 2015, 795 F.3d 380, a decision which has already been cited in over fifty cases. A class settlement was finalized in early 2017 and a total recovery of \$24 million was obtained for the class after a month-long “baseball” arbitration trial in which Gary played a prominent role, handling all expert testimony, the class plaintiffs’ testimony, and closing argument.

**Lead Counsel, *Kahrer v. Ameriquest Mortgage Co.*, (W.D. Pa./MDL N.D. Ill.)** – Gary filed this action to challenge how courts determine consumer standing under RESPA, and how damages under the statute are calculated. In a seminal decision, 8 F.Supp.2d 748, Gary successfully argued that prior courts had fundamentally misinterpreted RESPA’s legislative history to dismiss claims under the statute. Multiple federal courts of appeal have adopted the *Kahrer* reasoning, including at least the Third and Sixth Circuits. The case ultimately resolved as part of MDL proceedings in the Northern District of Illinois.

**Lead Executive Committee, *Haag v. Janney Montgomery Scott*, (E.D. Pa.)** Gary served as a member of the plaintiffs’ Executive Committee, which led the litigation, in this wage and hour class action alleging that defendant stock brokerage company violated federal and state overtime laws. Gary played a prominent role in this protracted litigation, in which the parties reached a multi-state settlement after multiple mediations.

**Lead Counsel, *Crozer-Keystone Health System Overtime Litigation*, (E.D. Pa.)** – Gary filed a putative collective action in the Eastern District of Pennsylvania challenging pay practices related to nurse practitioners and/or physicians’ assistants. After discovery, the parties filed cross motions for summary judgment. In a widely reported opinion, 760 F.Supp.2d 513, Senior District Judge Eduardo C. Robreno granted Plaintiff’s motion for summary judgment, holding that Defendant misclassified individuals in Plaintiff’s job position. Gary led efforts to resolve the matter after summary judgement, and Judge Robreno approved the parties’ settlement in August 2012.

**Chair of Plaintiffs’ Leadership Committee, *Ellis v. Edward Jones* (N.D. Oh.)** – Gary chaired the Plaintiffs’ Leadership Committee in this wage and hour class action alleging that defendant stock brokerage company violated federal and state overtime laws. Following protracted discovery and multiple

rounds of mediation, the parties reached a class settlement in which class members from multiple states received more than \$19 million.

**Co-Counsel**, *Travis v. Navient Corporation et al*, (E.D.N.Y.) – In August 2017, Gary and his co-counsel brought class claims against Navient, another of the country’s largest student loan servicers. Gary represents a putative class of borrowers who assert Navient breached its obligations to federal student loan borrowers.

### **Representative Speaking Engagements**

- Panelist: Harris Martin’s Equifax Data Breach Litigation Conference (November 2017 – Atlanta). Topic: Counseling financial institutions and other businesses in the wake of the Equifax breach.
  - Panelist: Current Development and Strategies for Confronting Cyber and Data Security Risks in 2017: ABA Annual Meeting Section of Labor and Employment Law (August 2017 – New York). Topic: The various theories of liability in data breach cases, as well as the different types of damages associated with a data breach.
  - Panelist: ACI’s 2nd Cross-Industry Interdisciplinary Summit on Defending and Managing Class Actions (April 2017 – New York). Topic: The use of statistical evidence to support class claims, in the wake of the U.S. Supreme Court’s decision in *Tyson Foods v. Bouaphakeo*.
  - Panelist: PBI’s Advanced Cyber security Law (June 2016 – Pittsburgh). Topic: The composition of plaintiff classes in data breach litigation, as well as the theories of liability and defenses, including the economic loss doctrine and challenges to Article III standing.
  - Panelist: ACI’s Cross-Industry Interdisciplinary Summit on Defending and Managing Class Actions (April 2016 – New York). Topic: The Class Action Fairness Act and its impact on class actions, particularly with regard to venue and removal considerations.
  - Panelist: New Jersey Association for Justice – Boardwalk Seminar (April 2015 – Atlantic City). Topic: Data breach and cybersecurity litigation.
  - Panelist: ACBA’s Federal Court Section Class/Collective Action Seminar (November 2014 – Pittsburgh). The panel included several federal court judges and class action practitioners, discussing the differences between Rule 23 class actions versus collective actions under the Fair Labor Standards Act, in the context of settlement, preemptory challenges, and discovery.
- Panelist: PBI’s Cybersecurity Law (August 2014 – Pittsburgh). Topic: The Target data breach and its impact on data breach litigation generally.

## Exhibit C

# SCOTT+SCOTT ATTORNEYS AT LAW LLP



## MISSION STATEMENT

Scott+Scott Attorneys at Law LLP (“Scott+Scott”) is a nationally recognized law firm headquartered in Connecticut with offices in California, New York City, and Ohio. Scott+Scott represents individuals, businesses, public and private pension funds, and others who have suffered from corporate fraud and wrongdoing. Scott+Scott is directly responsible for recovering hundreds of millions of dollars and achieving substantial corporate governance reforms on behalf of its clients. Scott+Scott has significant expertise in complex antitrust, consumer, securities, ERISA, and civil rights litigation in both federal and state courts. Through its efforts, Scott+Scott promotes corporate social responsibility.

## ANTITRUST

Scott+Scott litigates complex antitrust cases throughout the United States. Scott+Scott represents investors, business, and consumers in price-fixing, bid-rigging, monopolization, and other restraints of trade cases on both a class-wide and individual basis, helping to ensure that markets remain free, open, and competitive. With the opening of a London Office, Scott+Scott’s commitment to competition now includes pursuing its clients’ claims on a global basis.

Cases where Scott+Scott is currently serving as court-appointed lead counsel with the responsibility for the prosecution of class claims include:

- *In Re: Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-7789 (S.D.N.Y.) (challenging price-fixing of foreign exchange rates (over \$2.3 billion in settlements)); and
- *In re Disposable Contact Lens Antitrust Litigation*, Case No. 3:15-md-2626 (M.D. Fla.) (class action alleging illegal anticompetitive policies to eliminate discount pricing by the major manufactures and distributor of disposable contact lenses).

Scott+Scott is also currently leading plaintiffs in a group of firms in:

- *Putnam Bank v. Intercontinental Exchange, Inc.*, Case No. 1:19-cv-0439 (S.D.N.Y.) (class action alleging anticompetitive conduct in the setting of the ICE LIBOR benchmark rate).

Scott+Scott has served as court-appointed co-lead counsel in other cases, including:

- *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388 (D. Mass.) (challenging bid rigging and market allocation of leveraged buyouts by private equity firms resulting in \$590.5 million in settlements);
- *Alaska Electrical Pension Fund v. Bank of America Corp.*, No. 14-cv-7126 (S.D.N.Y.) (challenging price-fixing of the ISDAfix benchmark interest rate and resulting in \$504.5 million in settlements);
- *In re Korean Air Lines Co., Ltd. Antitrust Litigation*, MDL No. 1891, No. CV 07-06542 (C.D. Cal.) (challenging price-fixing/illegal surcharge (\$86 million in cash and travel voucher settlements)); and
- *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company*, No. 12-cv-03824 (E.D. Pa.) (challenging monopolization in the sale of name-brand pharmaceutical (\$8 million settlement));

Scott+Scott is also co-lead counsel in numerous cases challenging no-hire agreements between franchise stores as a *per se* violation of Section 1 of the Sherman Act:

- *In Re: Papa John's Employee and Franchise Antitrust Litigation*, Case No. 3:18-cv-00825 (W.D. Ky.);
- *Deslandes v. McDonalds USA, LLC*, Case No. 1:17-cv-04857 (N.D. Ill.);
- *Butler v. Jimmy John's Franchise, LLC*, Case No. 3:18-cv-00133 (S.D. Ill.);
- *Blanton v. Domino's Pizza Franchising LLC*, Case No. 2:18-cv-13207 (E.D. Mich.); and
- *Ogden v. Little Caesar Enterprises, Inc.*, Case No. 2: 18-cv-12792 (E.D. Mich.).

When not serving as lead counsel, Scott+Scott has served on the executive leadership committees in numerous class action cases, including:

- *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 1:05-md-1720 (E.D.N.Y.) (challenging price-fixing in the payment cards industry (p to \$6.24 billion settlement preliminarily approved));
- *Kleen Products LLC v. Packaging Corporation of America*, No. 1:10-cv-05711 (N.D. Ill.) (challenging price-fixing of containerboard products (\$376,400,000 settlement));
- *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420-YGR (DMR) (N.D. Cal.) (challenging price-fixing of lithium-ion batteries); and
- *In re Mexican Government Bonds Antitrust Litig.*, 18-cv-02830 (JPO) (S.D.N.Y.) (an antitrust class action by eight institutional investors prosecuting 10 global financial institutions for colluding to fix the prices of debt securities issued by the Mexican Government between 2006 and 2017).

Scott+Scott's class action antitrust experience includes serving as co-trial counsel in:

- *In re Scrap Metal Antitrust Litigation*, 02-cv-0844-KMO (N.D. Ohio), where it helped obtain a \$34.5 million jury verdict, which was subsequently affirmed by the United States Court of Appeals for the Sixth Circuit (see *In re Scrap Metal Antitrust Litigation*, 527 F.3d 517, 524 (6th Cir. 2008)); and
- In the consolidated bench trial in *Ross v. Bank of America N.A.*, No. 05-cv-7116, MDL No. 1409 (S.D.N.Y.), and *Ross v. American Express Co.*, No. 04-cv-5723, MDL No. 1409 (S.D.N.Y.).

Scott+Scott also represents large clients in opt-out antitrust litigation. Scott+Scott currently represents:

- Eastman Kodak Company, Agfa Corporation, Agfa Graphics, N.V., and Mag Instrument, Inc. in *In re: Aluminum Warehousing Antitrust Litigation*, MDL No. 2481 (S.D.N.Y.).

Scott+Scott previously represented publicly traded corporations, such as:

- Parker Hannifin Corporation and PolyOne Corporation, in matters such as *In re Rubber Chemicals Antitrust Litigation*, MDL No. 1648 (N.D. Cal.);
- *In re Polychloroprene Rubber (CR) Antitrust Litigation*, MDL No. 1642 (D. Conn.); and
- *In re Plastic Additives Antitrust Litigation (No. II)*, MDL No. 1684 (E.D. Pa.).

## CONSUMER RIGHTS

Scott+Scott and its attorneys have a proven track record of obtaining significant recoveries for consumers in class action cases. Scott+Scott is one of the premier advocates in the area of consumer protection law and has been appointed to a number of prominent leadership positions.

Cases where Scott+Scott has played a leading role in the area of consumer protection litigation include:

- *In re Provident Financial Corp. Credit Card Terms Litigation*, MDL No. 1301 (E.D. Pa.) (\$105 million settlement was achieved on behalf of a class of credit card holders who were charged excessive interest and late charges on their credit cards);
- *The Vulcan Society, Inc. v. City of New York*, No. 07-cv-02067 (E.D.N.Y.) (\$100 million settlement and significant injunctive relief was obtained for a class of black and Hispanic applicants who sought to be New York City firefighters but were denied or delayed employment due to racial discrimination);
- *In re Prudential Ins. Co. SGLI/VGLI Contract Litigation*, MDL No. 2208 (D. Mass.) (\$40 million settlement was achieved on behalf of a class of military service members and their families who had purchased insurance contracts);

- *In re Target Corp. Customer Data Security Breach Litigation*, MDL No. 2522 (D. Minn.) (\$59 million settlement achieved on behalf of financial institutions involving data breach of personal and financial information of approximately 40 million credit and debit card holders);
- *Greater Chautauqua Federal Credit Union v. Kmart Corporation*, No. 15-cv-02228 (N.D. Ill.) (\$18 million monetary and injunctive settlement on behalf of financial institutions involving data breach of credit and debit card information);
- *Winsouth Credit Union v. Mapco Express Inc.*, Case No.: 3:14-cv-1573 (M.D. Tenn.) (largest dollar-per-card settlement obtained on behalf of financial institutions involving data breach of credit and debit card information);
- *Gunther v. Capital One, N.A.*, No. 09-2966 (E.D.N.Y.) (a net settlement resulting in class members receiving 100% of their damages was obtained);
- *In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation*, MDL No. 2086 (W.D. Mo.) (\$37 million settlement obtained on behalf of class of propane purchasers who alleged defendants overcharged the class for under-filled propane tanks);
- *Murr v. Capital One Bank (USA), N.A.*, No. 1:13-cv-1091 (E.D. Va.) (\$7.3 million settlement pending on behalf of class of consumers who were misled into accepting purportedly 0% interest offers); and
- *Howerton v. Cargill, Inc.*, No. 13-cv-00336 (D. Haw.) (\$6.1 settlement obtained on behalf of a class of consumers who purchased Truvia, purported to be deceptively marketed as “all-natural”).

Moreover, Scott+Scott is currently serving in a leadership capacity in a number of class action consumer protection cases, including:

- *In re The Home Depot, Inc., Customer Data Security Breach Litigation*, MDL No. 2583 (N.D. Ga.) (co-lead counsel, \$27.25 million settlement on behalf of financial institutions involving data breach and the theft of the personal and financial information of over 40 million credit and debit card holders);
- *First Choice Federal Credit Union v. The Wendy’s Co.*, 2:16-cv-00506 (W.D. Pa.) (co-lead counsel, preliminary approval of \$50 million settlement on behalf of financial institutions involving data breach of personal and financial information of millions of credit and debit card holders);
- *In re Cigna Corporation PBM Litigation*, Case No. 3:16-cv-1702 (D. Conn.) (Chair of Executive Committee, claims on behalf of plan participants involving overcharge of copayments for prescription drugs); and

- *Midwest America Federal Credit Union v. Arby's Restaurant Group, Inc.*, 1:17-cv-00514 (N.D. Ga.) (member of Executive Committee, claims on behalf of financial institutions involving data breach of credit and debit card information).

## SECURITIES AND CORPORATE GOVERNANCE

Scott+Scott represents individuals and institutional investors that have suffered from stock fraud and corporate malfeasance. Scott+Scott's philosophy is simple – directors and officers should be truthful in their dealings with the public markets and honor their duties to their shareholders. Since its inception, Scott+Scott's securities and corporate governance litigation department has developed and maintained a reputation of excellence and integrity recognized by state and federal and state courts across the country. “It is this Court's position that Scott+Scott did a superlative job in its representation, which substantially benefited Ariel . . . . For the record, it should be noted that Scott+Scott has demonstrated a remarkable grasp and handling of the extraordinarily complex matters in this case . . . . They have possessed a knowledge of the issues presented and this knowledge has always been used to the benefit of all investors.” *N.Y. Univ. v. Ariel Fund Ltd.*, No. 603803/08, slip. op. at 9-10 (N.Y. Sup. Ct. Feb. 22, 2010). “The quality of representation here is demonstrated, in part, by the result achieved for the class. Further, it has been this court's experience, throughout the ongoing litigation of this matter, that counsel have conducted themselves with the utmost professionalism and respect for the court and the judicial process.” *In re Priceline.com, Inc. Sec. Litig.*, No. 00-cv-01884, 2007 WL 2115592, at \*5 (D. Conn. July 20, 2007).

Scott+Scott has successfully prosecuted numerous class actions under the federal securities laws, resulting in the recovery of hundreds of millions of dollars for shareholders. Representative cases prosecuted by Scott+Scott under the Securities Exchange Act of 1934 include: *In re Priceline.com, Inc. Sec. Litig.*, No. 00-cv-01884 (D. Conn. July 19, 2007) (\$80 million settlement); *Irvine v. ImClone Sys., Inc.*, No. 02-cv-00109 (S.D.N.Y. July 29, 2005) (\$75 million settlement); *Cornwell v. Credit Suisse Group*, No. 08-cv-03758 (S.D.N.Y. July 20, 2011) (\$70 million settlement); *Schnall v. Annuity and Life Re (Holdings) Ltd.*, No. 02-cv-2133 (D. Conn. June 13, 2008) (\$26.5 million settlement); and *St. Lucie County Fire District Firefighter's Pension Trust Fund v. Oilsands Quest Inc.*, No. 11-cv-1288-JSR (S.D.N.Y. Dec. 6, 2013) (\$10.23 million settlement) (\$7.85 million settlement preliminarily approved). Representative cases prosecuted by Scott+Scott under the Securities Act of 1933 include: *In re Washington Mutual Mortgage-Backed Securities Litigation*, No. 09-cv-0037 (W.D. Wash. Jan. 7, 2014) (\$26 million settlement); *In re Pacific Biosciences Securities Litigation*, No. CIV509210 (Cal. Super. Ct., San Mateo County, Oct. 31, 2013) (\$7.68 million settlement); *West Palm Beach Police Pension Fund v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL (Cal. Super. Ct., San Diego County, 2010) (\$7.25 million settlement); *Parker v. National City Corp.*, No. CV-08-657360 (Ohio Ct. Com. Pl., Cuyahoga County, June 23, 2010) (\$5.25 million settlement); and *Hamel v. GT Solar International, Inc.*, No. 217-2010-CV-05004 (N.H. Super. Ct., Merrimack County, May 10, 2011) (\$10.25 million settlement).

Scott+Scott currently serves as court-appointed lead counsel in various federal securities class actions, including *Birmingham Retirement and Relief System, v. S.A.C. Capital Advisors*, No. 1:12-cv-09350 (S.D.N.Y. June 17, 2013); *In re NQ Mobile Securities Litigation*, No. 13-cv-

07608 (S.D.N.Y. April 9, 2014); *In re Conn's Inc. Securities Litigation*, No. 14-cv-00548 (S.D. Tex. June 3, 2014) and *Weston v. RCS Capital Corp.*, No. 14-10136 (S.D.N.Y., Dec. 29, 2014).

In addition to prosecuting federal securities class actions, Scott+Scott has a proven track record of handling corporate governance matters through its extensive experience litigating shareholder derivative actions. In addition, Scott+Scott has been singularly successful in its shareholder derivative appellate practice, and as a result, has been instrumental in fashioning the standards in this area of law. In *Westmoreland County Employee Retirement System v. Parkinson*, No. 12-3342 (7th Cir. Aug. 16, 2013), the Seventh Circuit clarified the parameters of demand futility in those instances where a majority of directors of a corporation are alleged to have breached the fiduciary duty of loyalty by consciously disregarding positive law. In *Cottrell v. Duke*, No. 12-3871 (8th Cir. Dec. 28, 2013), the Eighth Circuit, in a case of first impression, clarified that the *Colorado River* stay is virtually never appropriate where there are exclusive federal claims. And in *King v. Verifone Holdings, Inc.*, No. 330, 2010 (Del. Jan. 28, 2011), the Supreme Court of Delaware has clarified the availability of the Delaware Corporate Code Section 220 “books and records” demands to a shareholder whose original plenary action was dismissed without prejudice in a federal district court. Representative actions prosecuted by Scott+Scott include: *In re DaVita Healthcare Partners Derivative Litigation*, No. 13-cv-1308 (D. Colo.) (corporate governance reform valued at \$100 million); *North Miami Beach General Employees Retirement Fund v. Parkinson*, No. 10C6514 (N.D. Ill.) (corporate governance valued between \$50 million and \$60 million); *In re Marvell Tech. Group Ltd. Derivative Litigation*, No. C-06-03894-RMW (RS) (N.D. Cal. Aug. 11, 2009) (\$54.9 million and corporate governance reforms); *In re Qwest Communications International, Inc.*, No. Civ. 01-RB-1451 (D. Colo. June 15, 2004) (\$25 million and corporate governance reform); *Plymouth County Contributory Retirement Fund v. Hassan*, No. 08-cv-1022 (D.N.J.) (settlement of derivative claims against Merck Schering Plough and its officers and directors providing for corporate governance reforms valued between \$50 million and \$75 million); *Carfagno v. Schnitzer*, No. 08-cv-912-SAS (S.D.N.Y. May 18, 2009) (modification of terms of preferred securities issued to insiders valued at \$8 million); and *Garcia v. Carrion*, No. 3:09-cv-01507 (D.P.R. Sept. 12, 2011) (settlement of derivative claims against the company and its officers and directors providing for corporate governance reforms valued between \$10.05 million and \$15.49 million).

Currently, Scott+Scott is actively prosecuting shareholder derivative actions, including *In re Bio-Rad Laboratories, Inc. Stockholder Litigation*, C.A. No. 11387 (Del. Ch. Aug. 13, 2015); *In re Tile Shop Holdings, Inc. Stockholder Derivative Litigation*, C. A. No. 108884 (Del. Ch. July 31, 2015); *West Palm Beach Fire Pension Fund v. Page*, No. 15-1334 (N.D. Cal. March 23, 2015); *In re Duke Energy Corp. Coal Ash Derivative Litigation*, C.A. No. 9682 (Del. Ch. May 21, 2014); and *In re OSI Systems, Inc. Derivative Litigation*, No. 14-2910 (C. D. Cal. April 15, 2014).

## **EMPLOYEE BENEFITS (ERISA)**

Scott+Scott litigates complex class actions across the United States on behalf of corporate employees alleging violations of the federal Employee Retirement Income Security Act. ERISA was enacted by Congress to prevent employers from exercising improper control over retirement plan assets and requires that pension and 401(k) plan trustees, including employer corporations,

owe the highest fiduciary duties to retirement plans and their participants as to their retirement funds. Scott+Scott is committed to continuing its leadership in ERISA and related employee-retirement litigation, as well as to those employees who entrust their employers with hard-earned retirement savings. Representative recoveries by Scott+Scott include: *In re Royal Dutch/Shell Transport ERISA Litigation*, No. 2:04-cv-01398-JWB-SDW (D.N.J. Aug. 30, 2005) (\$90 million settlement); *In re General Motors ERISA Litigation*, No. 2:05-cv-71085-NGE-RSW (E.D. Mich. June 5, 2008) (\$37.5 million settlement); and *Rantala v. ConAgra Foods*, No. 8:05-cv-00349-LES-TDT (D. Neb.) (\$4 million settlement).

## CIVIL RIGHTS LITIGATION

Scott+Scott has also successfully litigated cases to enforce its clients' civil rights. In *The Vulcan Society, Inc. v. The City of New York*, No. 1:07-cv-02067-NGG-RLM (E.D.N.Y.), Scott+Scott was part of a team of lawyers representing a class of black applicants who were denied or delayed employment as New York City firefighters due to decades of racial discriminatory conduct. The district court certified the class in a post-*Walmart v. Dukes* decision, granted summary judgment against the City on both intentional discrimination and disparate impact claims, and after trial ordered broad injunctive relief, including a new examination, revision of the application procedure, and continued monitoring by a court-appointed monitor for at least 10 years. The back pay and compensatory damage award will be determined in a subsequent ruling. In *Hohider v. United Parcel Services, Inc.*, No. 2:04-cv-00363-JFC (W.D. Penn.), Scott+Scott obtained significant structural changes to UPS's Americans with Disabilities Act compliance policies and monetary awards for some individual employees in settlement of a ground-breaking case seeking nationwide class certification of UPS employees who were barred from reemployment after suffering injuries on the job.

## ATTORNEY BACKGROUND AND EXPERIENCE

**MELVIN SCOTT** is a graduate of the University of Connecticut (B.A. 1950) and the University of Kentucky (M.A. 1953; LL.B. 1957). Mr. Scott founded the firm in 1975. He formerly practiced in Kentucky and is presently admitted to practice in Connecticut and Pennsylvania. Mr. Scott was a member of the Kentucky Law Review, where he submitted several articles for publication. He has served as an Attorney Trial Referee since the inception of the program in the State of Connecticut and is a member of the Fee Dispute Committee for New London County. Mr. Scott also formerly served as a Special Public Defender in criminal cases and as a member of the New London County Grievance Committee. Mr. Scott actively represents aggrieved parties in securities, commercial and criminal litigation and served or serves as counsel in *Irvine, et al. v. ImClone Systems, Inc.*; *Schnall v. Annuity and Life Re (Holdings) Ltd.*; *In re 360networks Class Action Securities Litigation*; *In re General Motors ERISA Litigation*, and *Hohider v. UPS*, among others.

**DAVID R. SCOTT** is the managing partner of Scott+Scott. He represents multinational corporations, hedge funds, and institutional investors in high-stakes complex litigation, including antitrust, commercial, and securities actions.

Mr. Scott has received widespread recognition for his antitrust work. He has been elected to Who's Who Legal: Competition 2015, 2016, and 2017 which lists the world's top antitrust lawyers who are selected based on comprehensive, independent survey work with both general counsel and lawyers in private practice around the world. He has also received a highly recommended ranking by Benchmark Litigation for each of the years 2013-2015.

Mr. Scott's antitrust experience includes matters dealing with unlawful price-fixing cartels, illegal tying, and anticompetitive monopolization. Currently, Mr. Scott is lead counsel in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, a cartel action alleging a longstanding and widespread conspiracy to manipulate the foreign exchange market, in which billions in settlements have been announced to date. He is co-lead counsel in a class action case alleging that the world's largest banks and their broker, ICAP, entered a conspiracy to manipulate ISDAfix, a financial benchmark that is tied to over \$379 trillion of outstanding interest-rate swaps around the world.

Mr. Scott's previous antitrust cases have resulted in significant recoveries for victims of price-fixing cartels. Among other cases, Mr. Scott served as co-lead counsel in *Dahl v Bain Capital Partners*, No. 1:07-cv-12388 (D. Mass.), an action alleging that the largest private equity firms in the United States colluded to suppress prices that shareholders received in leveraged buyouts and that the defendants recently agreed to settle for \$590.5 million. He was on the executive committee in a lawsuit accusing Visa and MasterCard of engaging in anticompetitive conduct in setting credit card and debit card acceptance fees that recently settled for up to \$6.24 billion. And he was lead counsel in *Red Lion Medical Safety v. Ohmeda*, No. 06-cv-1010 (E.D. Cal.), a lawsuit alleging that Ohmeda, one of the leading manufacturers of medical anesthesia equipment in the United States, excluded independent service organizations from the market for servicing its equipment. The case was successfully resolved in settlement negotiations before trial.

Mr. Scott has also taken the lead in bringing claims on behalf of institutional investors, such as sovereign wealth funds, corporate pension schemes, and public employee retirement funds, against mortgaged-backed securities trustees for failing to protect investors. Such cases include *Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago v. The Bank of New York Mellon* (MBS sponsored by Countrywide Financial Corp.), No. 1:11-cv-05459 (S.D.N.Y.); *Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago v. Bank of America* (MBS sponsored by Washington Mutual Bank), No. 1:12-cv-02865 (S.D.N.Y.); and *Oklahoma Police Pension and Retirement System v. U.S. Bank National Association* (MBS sponsored by Bear Stearns), No. 1:11-cv-08066 (S.D.N.Y.). He also represented a consortium of regional banks in litigation relating to toxic auction rate securities ("ARS") and obtained a sizable recovery for the banks in a confidential settlement. This case represents one of the few ARS cases in the country to be successfully resolved in favor of the plaintiffs.

In addition, Mr. Scott has extensive experience litigating shareholder derivative cases, achieving substantial corporate governance reforms on behalf of his clients. Representative actions include: *In re Marvell Tech. Group Ltd. Derivative Litigation*, No. C-06-03894 (N.D. Cal.) (settlement obtaining \$54.9 million in financial benefits for the company, including \$14.6 million in cash, and corporate governance reforms to improve stock option granting procedures and internal controls, valued at more than \$150 million); *In re Qwest Communications International, Inc.*, No. 01-RB-1451 (D. Colo.) (settlement obtaining \$25 million for the company and achieving corporate governance reforms aimed at ensuring board independence); *Plymouth County Contributory Retirement System v. Hasan*, No. 08-1022 (D.N.J.) (settlement requiring annual reporting to the company's board where any clinical drug trial is delayed, valued at between \$50 million - \$75 million); *Carfagno v. Schnitzer*, No. 08-cv-0912 (S.D.N.Y.) (settlement resulting in modification of terms of preferred securities issued to insiders, valued at \$8 million); and *Garcia v. Carrion*, No. 09-cv-1507 (D.P.R.) (settlement achieving reforms aimed at rectifying internal control weaknesses and improving director education in accounting and ethics, valued at between \$10 million - \$15 million).

Mr. Scott is frequently quoted in the press, including in publications such as *The Financial Times*, *The Guardian*, *The Daily Telegraph*, *The Wall Street Journal*, and *Law360*. He is regularly invited to speak at conferences around the world and before Boards of Directors and trustees responsible for managing institutional investments.

Mr. Scott is admitted to practice in Connecticut, New York, the United States Tax Court, and numerous United States District Courts.

Mr. Scott is a graduate of St. Lawrence University (B.A., *cum laude*, 1986), Temple University School of Law (J.D., Moot Court Board, 1989), and New York University School of Law (LLM in taxation).

**CHRISTOPHER M. BURKE** chairs Scott+Scott's competition practice and sets the Firm's litigation standards. Mr. Burke's principal practice is in complex antitrust litigation, particularly in the financial services industry and he has served as lead counsel in some of the world's largest

financial services antitrust matters. He currently sits as a partner in the firm's San Diego and New York offices.

Currently, Mr. Burke is co-lead counsel in *In Re Foreign Exchange Benchmark Rates Antitrust Litigation*, 13-cv-7789 (S.D.N.Y.) (\$2.3 billion settlement); *In Re Disposable Contact Lens Antitrust Litigation*, Case No. 3:15-md-2626 (M.D. Fla.); and *Alaska Electrical Pension Fund v. Bank of America Corporation*, 14-cv-7126 (S.D.N.Y.) (ISDAfix litigation) (\$504.5 million settlement).

Mr. Burke has served as co-lead counsel in *Dahl v. Bain Capital Partners*, 07-cv-12388 (D. Mass.) (\$590.5 million settlement); *Axiom Investment Advisors, LLC, by and through its Trustee, Gildor Management LLC v. Barclays Bank PLC*, 15-cv-09323 (S.D.N.Y.) (\$50 million settlement); *In re Currency Conversion Antitrust Litigation*, MDL No. 1409 (S.D.N.Y.) (\$336 million settlement); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.) (subsequently executive committee member after joining Scott+Scott) (up to \$6.24 billion settlement); *LiPuma v. American Express Co.*, Case No. 1:04-cv-20314 (S.D. Fla.) (\$90 million settlement); and was one of the trial counsel in *Schwartz v. Visa*, Case No. 822505-4 (Alameda Cty. Super. Ct.) (\$780 million plaintiff's judgment after six months of trial); and *In re Disposable Contact Lens Antitrust Litigation*, MDL No. 1030 (M.D. Fla.) (\$90 million settlement with final settlements occurring during trial). Mr. Burke was one of the original lawyers in the *Wholesale Elec. Antitrust* cases in California, which settled for over \$1 billion.

Further, Mr. Burke was trial counsel in *Ross v. Bank of America N.A.*, No. 05-cv-7116, MDL No. 1409 (S.D.N.Y.) and *Ross v. American Express Co.*, No. 04-cv-5723, MDL No. 1409 (S.D.N.Y.). He was also co-lead counsel for indirect purchasers in *In re Korean Air Lines Co., Ltd. Antitrust Litigation*, MDL No. 1891 (C.D. Cal.) (\$86 million settlement), and *In re Prudential Ins. Co. of America SGLI/VGLI Contract Litigation*, No. 11-md-2208 (D. Mass.) (\$40 million settlement). Mr. Burke also investigated and filed the first complaint in *In re Credit Default Swaps Antitrust Litigation*, 13-md-2476 (S.D.N.Y.).

Mr. Burke frequently lectures at professional conferences and CLEs on competition matters, including litigation surrounding financial benchmarks, class-barring arbitration clauses, the effects of *Twombly* in 12(b)(6) motions, and the increasing use of experts at class certification and trial. The American Antitrust Institute ("AAI") honored Christopher Burke and Scott+Scott Attorneys at Law with an *Outstanding Antitrust Litigation Achievement in Private Law Practice* award at their 2018 Antitrust Enforcement Awards for efforts in the ISDAfix litigation. In 2014, he was also recognized for his exemplary work in the *Dahl v. Bain Capital Partners* matter by the AAI and has regularly been designated as a Super Lawyer by Thomson Reuters.

Mr. Burke is a graduate of The Ohio State University (B.A. 1984), William & Mary (M.A. 1988), and the University of Wisconsin (M.A. 1989; J.D. 1993; Ph.D. 1996). He has also served as an Assistant Attorney General at the Wisconsin Department of Justice and has lectured on law-related topics, including constitutional law, law and politics, and civil rights at the State University of New York at Buffalo and at the University of Wisconsin. Mr. Burke's book, *The Appearance of Equality: Racial Gerrymandering, Redistricting, and the Supreme Court*

(Greenwood, 1999), examines conflicts over voting rights and political representation within the competing rhetoric of communitarian and liberal strategies of justification.

Mr. Burke is admitted to practice by the Supreme Courts of the States of California, New York, and Wisconsin, and numerous United States District Courts and Courts of Appeal.

**WALTER W. NOSS** serves as the managing partner for Scott+Scott's San Diego office. He practices complex federal litigation with an emphasis on prosecuting antitrust actions on both a class-wide and individual, opt-out basis.

Currently, Mr. Noss represents class plaintiffs in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789 (S.D.N.Y.), an action challenging collusion regarding foreign exchange rates, and *Alaska Electrical Pension Fund v. Bank of America Corporation*, No. 1:14-cv-07126 (S.D.N.Y.), an action challenging collusion regarding the setting of the ISDAfix benchmark interest rate.

Mr. Noss represented class plaintiffs in *Dahl v. Bain Capital Partners LLC*, No. 1:07-cv-12388 (D. Mass.), a case challenging collusion among private equity firms. In *Dahl*, Mr. Noss served as one of the primary litigation counsel prosecuting the case, including deposing key managing directors, drafting dispositive motions, and arguing in court in opposition to defendants' summary judgment motions. The defendants in *Dahl* settled for \$590.5 million.

Mr. Noss represented the indirect purchaser class plaintiffs in *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company*, No. 2:12-cv-03824 (E.D. Pa.), a case challenging monopolistic conduct known as "product hopping" by the defendants. In *Mylan*, he was appointed sole lead counsel for the indirect class, and directed their prosecution and eventual settlement of the case for \$8 million.

Mr. Noss also represents corporate opt-out clients in *In re: Aluminum Warehousing Antitrust Litigation*, MDL No. 2481 (S.D.N.Y.), a case challenging collusion regarding the spot metal price of physically-delivered aluminum. He has previously represented out-out clients in *In re Rubber Chemicals Antitrust Litigation*, MDL No. 1648 (N.D. Cal.); *In re Polychloroprene Rubber (CR) Antitrust Litigation*, MDL No. 1642 (D. Conn.); and *In re Plastics Additives (No. II) Antitrust Litigation*, MDL No. 1684 (E.D. Pa.), which were cases involving price-fixing by horizontal competitors in the synthetic rubber industry.

Mr. Noss has experience successfully litigating in federal civil jury trials. In April 2011, Mr. Noss served as lead trial counsel in *Novak v. Gray*, No. 8:09-cv-00880 (M.D. Fla.), winning a \$4.1 million jury verdict for breach of oral contract and fraudulent inducement. In December 2009, Mr. Noss served as plaintiffs' local counsel at trial in *Lederman v. Popovich*, No. 1:07-cv-00845 (N.D. Ohio), resulting in a \$1.8 million jury verdict for plaintiffs on claims of breach of fiduciary duties, conversion, and unjust enrichment. In January and February 2006, Mr. Noss assisted the trial team for *In re Scrap Metal Antitrust Litigation*, No. 1:02-cv-0844 (N.D. Ohio 2006), resulting in a \$34.5 million class action plaintiffs' verdict.

Mr. Noss graduated *magna cum laude* from the University of Toledo with a Bachelor of Arts in Economics in 1997 and *with honors* from The Ohio State University College of Law in 2000. He is a member of the California, New York, and Ohio Bars. Mr. Noss is also a member of the bars of the United States District Courts for the Northern, Central, and Southern Districts of California, the Southern District of New York, and the Northern and Southern Districts of Ohio, as well as the United States Court of Appeals for the Sixth, Ninth, and Eleventh Circuits. Prior to joining Scott+Scott in April 2004, he was an associate in the Cleveland, Ohio office of Jones Day.

**KRISTEN M. ANDERSON** is a partner in the firm's New York office. Ms. Anderson's practice focuses on complex and class action litigation with an emphasis on antitrust matters. Ms. Anderson is recognized as a Rising Star in the 2014-15, 2015-16, and 2016-17 editions of Super Lawyers.

A substantial portion of Ms. Anderson's practice is devoted to antitrust cases within the financial services industry. Currently, Ms. Anderson represents plaintiff-investors in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-7789 (S.D.N.Y.) and *Axiom Investment Advisors, LLC, by and through its Trustee Gildor Management LLC v. Barclays Bank PLC*, No. 15-cv-9323 (S.D.N.Y.), cases alleging misconduct in the foreign exchange market by many global financial institutions. Ms. Anderson also represented pension funds and individual investors in *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388 (D. Mass.) (\$590.5 million settlement), an antitrust action alleging collusion in the buyouts of large publicly traded companies by private equity firms. Ms. Anderson also served on the trial team representing certified classes of cardholders in antitrust cases challenging class action-banning arbitration clauses in credit card agreements as restraints of trade in *Ross v. Bank of America N.A.*, No. 05-cv-7116, MDL No. 1409 (S.D.N.Y.) and *Ross v. American Express Co.*, No. 04-cv-5723, MDL No. 1409 (S.D.N.Y.).

Ms. Anderson is an active member of the American Bar Association's Antitrust Section. She served as Vice Chair of the Antitrust Section's Trial Practice Committee and was an editor of the Committee's newsletter, *Trying Antitrust*. She has also served as a Vice Chair of the Antitrust Section's Books & Treatises Committee. She has been a contributing author to the Antitrust Section's *Antitrust Discovery Handbook* (2d ed.), *Joint Venture Handbook* (2d ed.), and the *2010 Annual Review of Antitrust Law Developments*. In addition, Ms. Anderson served as an editor for *Model Jury Instructions in Civil Antitrust Cases* (2016 ed.). Ms. Anderson was a co-author of an article appearing in the Fall 2014 edition of *Competition: Journal of the Antitrust and Unfair Competition Section of the State Bar of California*, entitled *The Misapplication of Associated General Contractors to Cartwright Act Claims*, 23 COMPETITION: J. ANTI. & UNFAIR COMP. L. SEC. ST. B. CAL. 120 (2014).

Ms. Anderson is a graduate of St. Louis University (B.A. Philosophy, *summa cum laude*, 2003) and the University of California, Hastings College of the Law (J.D. 2006). During law school, Ms. Anderson served as an extern at the U.S. Department of Justice, Antitrust Division, in San Francisco. While at Hastings, Ms. Anderson also served as an extern to Justice Kathryn Mickle Werdegard of the Supreme Court of California and was the research assistant to Professor James R. McCall in the areas of antitrust and comparative antitrust law.

Ms. Anderson is admitted to practice in California, New York, and the District of Columbia.

**JOSEPH P. GUGLIELMO** is a partner in the firm's New York office and represents institutional and individual clients in antitrust, consumer, and securities litigation in federal and state courts throughout the United States and has achieved numerous successful outcomes.

Mr. Guglielmo, along with other attorneys at Scott+Scott, was recognized for his efforts representing New York University in obtaining a monumental temporary restraining order of over \$200 million from a Bernard Madoff feeder fund. Specifically, New York State Supreme Court Justice Richard B. Lowe III stated, "Scott+Scott has demonstrated a remarkable grasp and handling of the extraordinarily complex matters in this case. The extremely professional and thorough means by which NYU's counsel has litigated this matter has not been overlooked by this Court."

Mr. Guglielmo serves in a leadership capacity in a number of complex antitrust and consumer actions, including: *In Equifax, Inc. Customer Data Security Breach Litigation*, No. 1:17-md-2800 (N.D. Ga.), co-lead counsel, claims on behalf of financial institutions involving data breach of personal and financial information of approximately 150 million consumers, *In Re: Disposable Contact Lens Antitrust Litigation*, No. 3:15-md-2626 (M.D. Fla.), co-lead counsel, claims on behalf of a class of contact lens purchasers alleging violations of the antitrust laws, *Forth v. Walgreen Co, Inc.*, No. 1:17-cv-02246 (N.D. Ill.), lead counsel, asserting claims on behalf of class of consumers alleging overcharge for medically necessary, covered prescription drugs. Mr. Guglielmo is also actively involved in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789-LGS (S.D.N.Y), which involves claims on behalf of purchasers of foreign exchange instruments alleging violations of federal antitrust laws.

Mr. Guglielmo has achieved significant victories and obtained numerous settlements for his clients. Mr. Guglielmo was co-lead counsel in *In re The Home Depot, Inc., Customer Data Security Breach Litigation*, MDL No. 2583 (N.D. Ga.), where a \$27.25 million settlement was obtained on behalf of financial institutions involving a data breach and the theft of the personal and financial information of over 40 million credit and debit card holders. He was also a member of the Plaintiffs' Steering Committee in *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 2522 (D. Minn.), where a \$59 million settlement was obtained on behalf of financial institutions involving data breach of personal and financial information of approximately 110 million credit and debit cardholders. Mr. Guglielmo was also lead counsel in *Winsouth Credit Union v. Mapco Express Inc.*, No.: 3:14-cv-1573 (M.D. Tenn.), which achieved the largest dollar-per-card recovery on behalf of financial institutions involving data breach of credit and debit card information. Mr. Guglielmo was one of the principals involved in the litigation and settlement of *In re Managed Care Litigation*, MDL No. 1334 (S.D. Fla.), which included settlements with Aetna, CIGNA, Prudential, Health Net, Humana, and WellPoint, providing monetary and injunctive benefits exceeding \$1 billion. Additional cases Mr. Guglielmo played a leading role and obtained substantial recoveries for his clients include: *Love v. Blue Cross and Blue Shield Ass'n*, No. 03-cv-21296 (S.D. Fla.), which resulted in settlements of approximately \$130 million and injunctive benefits valued in excess of \$2 billion; *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1897 (D.N.J.), settlements in excess of \$180 million; *Valle v. Popular Community Bank*, Case No. 653936/2012 (N.Y. Supreme Ct.),

\$5.2 million settlement on behalf of consumers, *In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation*, MDL No. 2086 (W.D. Mo.), consumer settlements in excess of \$40 million; *Bassman v. Union Pacific Corp.*, No. 97-cv-02819 (N.D. Tex.), \$35.5 million securities class action settlement; *Garcia v. Carrion*, No. CV. 11-1801 (D. P.R.), substantial corporate governance reforms; *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass-Through Certificates*, No. 09-cv-00037 (W.D. Wash.), \$26 million securities class action settlement, *Murr v. Capital One Bank (USA), N.A.*, No. 13-cv-1091 (E.D. Va.), \$7.3 million settlement pending on behalf of class of consumers who were misled into accepting purportedly 0% interest offers, and *Howerton v. Cargill, Inc.*, No. 13-cv-00336 (D. Haw.), \$6.1 settlement obtained on behalf of class of consumers who purchased Truvia, purported to be deceptively marketed as “all-natural.” Mr. Guglielmo was the principle litigator and obtained a significant opinion from the Hawaii Supreme Court in *Hawaii Medical Association v. Hawaii Medical Service Association*, 113 Hawaii 77 (Haw. 2006), reversing the trial court’s dismissal and clarifying rights for consumers under the state’s unfair competition law.

Mr. Guglielmo lectures on electronic discovery and was a member of the Steering Committee of Working Group 1 of the Sedona Conference®, an organization devoted to providing guidance and information concerning issues such as discovery and production issues, as well as areas focusing on antitrust law, complex litigation, and intellectual property. Mr. Guglielmo is a frequent speaker on electronic discovery issues at the Sedona Conference as well as the Advanced eDiscovery Institute at Georgetown University Law Center. Mr. Guglielmo was also recognized for his achievements in litigation by his selection to *The National Law Journal*’s “Plaintiffs’ Hot List.” In 2019, Mr. Guglielmo was again named by Super Lawyers as a top Antitrust lawyer in the New York metro area and was again named by Who’s Who Legal Litigation: Leading Practitioner-E-Discovery (2019).

Mr. Guglielmo graduated from the Catholic University of America (B.A., *cum laude*, 1992; J.D., 1995) and also received a Certificate of Public Policy.

Mr. Guglielmo is admitted to practice before numerous federal and state courts: the United States Supreme Court, the United States Court of Appeals for the First Circuit, Second Circuit, Third Circuit, Eighth Circuit, Ninth Circuit and Eleventh Circuit, the United States District Courts for the Southern and Eastern Districts of New York, District of Massachusetts, District of Connecticut, District of Colorado, Eastern District of Wisconsin, New York State, the District of Columbia, and the Commonwealth of Massachusetts.

He is also a member of the following associations: District of Columbia Bar Association, New York State Bar Association, American Bar Association, The Sedona Conference®, and a Board Member on the Advanced eDiscovery Institute at Georgetown University Law Center.

**WILLIAM C. FREDERICKS** holds a B.A. (with high honors) from Swarthmore College, an M. Litt. in International Relations from Oxford University (England), and a J.D. from Columbia University Law School. At Columbia, Mr. Fredericks was also a three-time Harlan Fiske Stone Scholar, a Columbia University International Fellow, and the winner of the law school’s Beck Prize (property law), Toppan Prize (advanced constitutional law) and Greenbaum Prize (written advocacy). A three-judge panel chaired by the late Justice Antonin Scalia also awarded Mr. Fredericks the Thomas E. Dewey Prize for the best oral argument in the final round of Columbia’s Stone Moot Court Honor Competition.

After clerking for the Hon. Robert S. Gawthrop III (E.D. Pa.) in Philadelphia, Mr. Fredericks spent seven years practicing securities and complex commercial litigation at Simpson Thacher & Bartlett LLP and Willkie Farr & Gallagher LLP in New York before moving to the plaintiffs' side of the bar in 1996. Since 1996, Mr. Fredericks has represented investors as a lead or co-lead plaintiff in dozens of securities class actions, including *In re Wachovia Preferred Securities and Bond/Notes Litig.* (S.D.N.Y.) (total settlements of \$627 million, reflecting the largest recovery ever in a pure Securities Act case not involving any parallel government fraud claims); *In re Rite Aid Securities Litig.* (E.D. Pa.) (total settlements of \$323 million, including the then-second largest securities fraud settlement ever against a Big Four accounting firm); *In re Sears Roebuck & Co. Sec. Litig.* (N.D. Ill.) (\$215 million settlement, representing the then-largest §10(b) class action recovery in an action that did not involve either a financial restatement or parallel government fraud claims); *In re State Street ERISA Litig.* (S.D.N.Y.) (one of the largest ERISA class settlements to date); *In re King Digital Sec. Enter. PLC S'holder Litig.* (Super. Ct. San Fran. Cty.) (\$18.5 million settlement, representing one of the largest state court §11 class action recoveries to date); and *Irvine v. ImClone Systems, Inc.* (S.D.N.Y.) (\$75 million settlement). Mr. Fredericks also played a leading role on the team that obtained a rare 9-0 decision for securities fraud plaintiffs in the U.S. Supreme Court in *Merck & Co., Inc. v. Reynolds* (which later settled for \$1.052 billion), and has also coauthored amicus briefs in various other Supreme Court cases (including *Halliburton*, *Amgen*, *CALPERS v. ANZ Securities*, and *Cyan*) involving significant securities law issues.

At Scott+Scott, Mr. Fredericks' current cases include representing investors in several pending securities fraud actions, and in antitrust litigation against over a dozen leading banks based on their involvement in manipulating foreign exchange ("FX") rates and spreads.

Mr. Fredericks has been recognized in the 2012-18 editions of "America's Best Lawyers" in the field of commercial litigation, in "Who's Who in American Law" (Marquis), and in the New York City "SuperLawyers" listings for securities litigation. He has been a frequent panelist on various securities litigation programs sponsored by the Practising Law Institute (PLI) – including ten years as a panelist on civil liabilities under the Federal Securities Act – and has lectured overseas on American class action litigation on behalf of the American Law Institute/American Bar Association (ALI/ABA). He is also a member of the New York City Bar Association (former chair, Committee on Military Affairs and Justice), the Federal Bar Council and the American Bar Association.

**SYLVIA M. SOKOL** is a New York- and London-based partner in the firm's Antitrust and Competition Law Practice. She focuses on representing national and international clients in litigation involving domestic and international cartels. Ms. Sokol has substantial experience in all aspects of complex litigation, including the day-to-day management of cases. She also has substantial experience in counseling corporate clients, evaluating potential claims, and developing strategies to recoup losses stemming from anticompetitive conduct.

Ms. Sokol currently represents a nationwide class in price-fixing litigation regarding the \$5.3 trillion-a-day foreign exchange market. She also represents a proposed nationwide class in an action involving ISDAfix, a financial benchmark that is tied to over \$379 trillion of interest-

rate swaps around the world. In addition, Ms. Sokol represents several large multinational corporations alleging that Goldman Sachs, JPMorgan, Glencore, and their warehouse affiliates conspired to restrict the supply of aluminum in London Metal Exchange-approved warehouses. And she represents several government entities in a national lawsuit alleging bid-rigging in the municipal derivatives market.

In addition, Ms. Sokol's civil litigation experience has involved defending corporate clients charged with unlawful business practices and monopolizations. She has also represented clients in criminal and extradition matters.

Ms. Sokol was selected for the International Who's Who of Competition Lawyers & Economists and for Competition - U.S. in 2016, 2017, and 2018. Honorees are selected based on comprehensive and independent survey responses received from general counsel and private practitioners around the world. She has been selected to be a Fellow in The Trial Lawyer Honorary Society of the Litigation Counsel of America, which is a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. *Lawyer Monthly* magazine awarded her the Women in Law Award 2017. She was also named a "Super Lawyer" in 2014, 2015, 2016, 2017, and 2018 Super Lawyers New York Metro Edition, and was named a "Super Lawyer" in 2011-2012, Super Lawyers Northern California Edition.

She is a 1998 graduate of the New York University School of Law (*cum laude*), and completed her undergraduate studies at the University of British Columbia. After law school, Ms. Sokol was awarded the Soros Justice Fellowship to serve a year in the Capital Habeas Unit of the Federal Public Defender's Office, where she represented clients condemned to death and developed training materials for members of the capital defense bar. She then served as a judicial law clerk to the Honorable Warren J. Ferguson, United States Court of Appeals for the Ninth Circuit, before spending several years working at Morrison & Foerster LLP.

Ms. Sokol is a member of the American Bar Association and is admitted to practice in New York, California, and the District of Columbia. She is also admitted to the Southern District of New York, the Northern, Southern, and Eastern Districts of California, as well as the United States Supreme Court.

She is bilingual in English and French, and holds French and United States citizenships.

**PETER A. BARILE III** is a partner in Scott+Scott's competition practice. His focus is on complex antitrust and commodity litigation.

Mr. Barile has extensive experience representing clients on both sides of the docket in a variety of industries and contexts, from consumers and investors to institutions and corporations, whether as individual plaintiffs, class plaintiffs, opt-outs, or defendants in complex matters. Prior to joining the firm, he practiced both in New York and in Washington D.C., with major law firms renowned for their historically leading antitrust practices.

Mr. Barile devotes a substantial amount of his practice to federal antitrust and commodity class action litigation involving the financial services industry in the Southern District of New York.

Mr. Barile is or has been involved in representing investor rights in major cases involving commodities and financial benchmarks, including: *Aluminum*, *Cotton*, *Crude Oil*, *FX*, *Gold*, *ISDAfix*, *LIBOR*, *Silver*, and *Zinc*.

He also has significant experience litigating high-tech antitrust cases in the Northern District of California, including *In re Online DVD Antitrust Litigation*; *In re Lithium Ion Batteries Antitrust Litigation*; and *In re High Tech Employees Antitrust Litigation*.

In addition to his work in federal district trial courts, Mr. Barile has considerable experience in other arenas, including the Judicial Panel on Multidistrict Litigation, federal Circuit Courts of Appeal, and the United States Supreme Court.

Mr. Barile is active in the antitrust bar, having held a number of leadership posts in the ABA and other organizations. He serves on the Advisory Board of the Loyola Institute for Consumer Antitrust Studies. Mr. Barile has published numerous articles and served as a panelist or speaker on antitrust issues. His work has been cited by the Federal Trade Commission and the Antitrust Modernization Commission, as well as leading academics and practitioners.

Mr. Barile also has helped nonprofit advocacy groups be heard in matters of national importance as Friends of the Court in major cases before the United States Supreme Court. His work has included *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007), in which he served as lead counsel for *amicus curiae* Consumer Federation of America in a landmark antitrust case on resale price fixing, and *Giles v. State of California*, 554 U.S. 353 (2008), in which he served as lead counsel for *amicus curiae* Battered Women's Justice Project, in a case concerning the scope of the Confrontation Clause of the United States Constitution.

Mr. Barile earned his law degree in 1999 from the University of Connecticut School of Law, *magna cum laude*, where he was an Editor of the Connecticut Law Review and Moot Court Champion. His bachelor's degree is from the University of Connecticut.

Mr. Barile is a member of the bars of New York, Connecticut, and the District of Columbia. He is admitted to practice in the United States District Courts for the Southern District of New York, Eastern District of New York, District of Columbia, Northern District of Illinois, District of Connecticut; United States Courts of Appeal for the Second, Fourth, Sixth, Seventh, Ninth, Federal, and District of Columbia Circuits, and the Supreme Court of the United States.

**BELINDA HOLLWAY** is the head of Scott+Scott's office in London. She has over a decade of competition law experience, and specialises in competition damages litigation before the English High Court, Competition Appeal Tribunal and the Court of Appeal, particularly on behalf of multinational corporations in follow-on damages claims. She has extensive expertise in developing and coordinating multijurisdictional litigation strategies, both within Europe and beyond. She also represents investors in shareholder litigation.

Prior to joining Scott+Scott, Ms. Hollway spent nine years in the London office of Freshfields Bruckhaus Deringer LLP. She represented clients across a wide range of industries, acting in many of the leading English competition damages cases, such as *Cooper Tire*, relating to the synthetic rubber cartel, and *National Grid v. ABB*, relating to the cartel in gas insulated

switchgear. She was the lead associate on the defence team in *Enron v. EWS*, which was the first follow-on damages claim ever to reach trial in the Competition Appeal Tribunal. Her wide experience on the defence side gives her a special insight into the issues that claimants must address and overcome in order to recoup losses stemming from breaches of competition law in Europe.

Ms. Hollway has also acted for numerous clients in competition law investigations, both internal investigations and those brought by the UK Office of Fair Trading (now the Competition and Markets Authority) and the European Commission. She has been involved in immunity applications, Commission cartel settlements, and contested cases. From this work, she has an in-depth understanding of the interaction between private and public enforcement in Europe and the ramifications that public enforcement has for the strategy and progression of damages claims.

Ms. Hollway attended the Australian National University and graduated in 2001 with a First Class Honours degree in History and a First Class Honours Degree and University Medal in Law. She then spent a year as an Associate to Her Honour Justice Catherine Branson at the Federal Court of Australia and then worked for the competition and litigation teams of Allens Arthur Robinson in Sydney, prior to moving to the United Kingdom in 2006. She has a Master's Degree in Competition Law from King's College London.

She has published on competition law issues, including in relation to the EU Damages Directive and has been quoted in the press on competition law in Europe.

Ms. Hollway is admitted to practice in England and Wales and in New South Wales, Australia.

**BETH A. KASWAN**, during her tenure as an Assistant U.S. Attorney and subsequent promotions to Chief of the Commercial Litigation Unit and Deputy Chief of the Civil Division of the U.S. Attorney's Office for the Southern District of New York, was appointed by the FDA as lead counsel in litigation to enjoin the manufacture of adulterated generic drugs in the landmark case *United States v. Barr Laboratories, Inc.*, 812 F. Supp. 458 (D.N.J. 1993). Ms. Kaswan, who began her career as an accountant at the offices of Peat, Marwick, Mitchell & Co., and then worked as a civil trial attorney at the U.S. Department of Justice in Washington, D.C., is the recipient of several awards from the Justice Department and other agencies she represented, including the Justice Department's John Marshall award, Special Commendation from the Attorney General, a Superior Performance award from the Executive Office of U.S. Attorneys and Tax Division Outstanding Achievement awards.

While at Scott+Scott, Ms. Kaswan served as lead counsel in *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass Through Certificates*, No. 09-cv-00037 (W.D. Wa.), the WaMu RMBS Section 11 Securities Act case which settled after plaintiffs succeeded in defeating the defendants' motion for summary judgment, only weeks before it was scheduled to proceed to a jury trial. Ms. Kaswan just completed the nine-week trial in *In the Matter of the Application of The Bank of New York Mellon*, Index No. 651786/2011 (N.Y. Supr. Ct.) in which she and other interveners challenged the proposed settlement between Bank of New York Mellon and Bank of America to resolve repurchase and servicing claims for 530 Countrywide trusts. She and others at Scott+Scott recently settled federal and state law claims against the

Securitization Trustees for WaMu and Bear Stearns Trusts in *Policemen's Annuity and Benefit Fund of the City of Chicago v. Bank of America, N.A.*, No. 12-cv-2865 (S.D.N.Y.) and *Oklahoma Police Pension and Retirement System v. U.S. Bank N.A.*, No. 11-cv-8066 (S.D.N.Y.), respectively. Ms. Kaswan brought a derivative suit on behalf of New York University against Ezra Merkin to freeze funds belonging to a feeder fund to Bernard Madoff. She also served as lead counsel to another shareholder derivative case, *Carfagno v. Schnitzer*, No. 08-CV-912-SAS (S.D.N.Y.), where she successfully negotiated a settlement on behalf of Centerline Holding Company and Centerline shareholders. Ms. Kaswan has served as lead counsel in *Cornwell v. Credit Suisse Group*, No. 08-cv-3758 (S.D.N.Y.) and *In re Tetra Technologies, Inc. Securities Litigation*, No. 08-cv-0965 (S.D. Tex.), among others.

Ms. Kaswan is a member of the New York and Massachusetts bars. Ms. Kaswan has been practicing law for over 35 years and is a partner in the firm's New York office.

**JUDY SCOLNICK** is a partner in the firm's New York office. Ms. Scolnick is a graduate of New York University (B.A., *cum laude* 1972), Brandeis University (M.A. Political Science Theory, 1973), and Boston College Law School (J.D., 1976), where she served on the Boston College Industrial and Commercial Law Review. She has extensive experience in the fields of shareholder derivative law, particularly in the pharmaceutical industry, employment law and employment class actions, and securities class actions. She has contributed substantially to recent jurisprudence expanding shareholders' rights to examine books and records of the corporations in which they hold stock. In *Cain v. Merck & Co., Inc.*, 415 N.J. Super. 319 (N.J. Super. A.D. 2010), the New Jersey Appellate Division agreed with Ms. Scolnick and held in a precedential decision that the New Jersey Business Corporation Act allows shareholders to inspect the minutes of board of directors and executive committee meetings upon a showing of proper purpose. In *King v. VeriFone Holdings, Inc.*, 12 A.3d 1140 (Del. Supr. 2011), the Delaware Supreme Court ruled in a ground-breaking decision that plaintiffs may, in certain circumstances, inspect a corporation's books and records to bolster a shareholder derivative complaint even after they have filed a lawsuit.

She has served as lead counsel in many shareholder derivative actions and is currently lead counsel in *North Miami General Employees Retirement Fund v. Parkinson*, No. 10-cv-6514 (N.D. Ill.), a shareholder derivative case on behalf of pharmaceutical company, Baxter International, arising from the Board's failure to comply with FDA orders to remediate a medical device known as the Colleague Pump. She is also lead counsel in *Cottrell v. Duke*, No. 12-4041 (W.D. Ark.), a shareholder derivative action brought on behalf of Wal-Mart arising from a widespread bribery and cover-up conspiracy conducted by Wal-Mart executives and Board members.

Ms. Scolnick has experience litigating shareholder derivative actions at both the trial and appellate level. She successfully argued the Baxter appeal where the Court of Appeals for the Seventh Circuit, reversing a trial court's dismissal, held that a pension fund's complaint on behalf of all shareholders passed the pre-suit demand futility threshold test under Delaware substantive law. *Westmoreland County Employees' Retirement System v. Parkinson*, 727 F.3d 719 (7th Cir. 2013). Also in 2013, Ms. Scolnick obtained a landmark ruling in the Wal-Mart shareholder derivative litigation from the Court of Appeals for the Eighth Circuit. The Eighth

Circuit reversed the district court's stay of the federal action in favor of a related proceeding in Delaware Chancery Court, and held that a *Colorado River* stay is never appropriate where the federal complaint alleges valid, exclusive federal claims. *Cottrell v. Duke*, 737 F.3d 1238 (8th Cir. 2013).

Ms. Scolnick has also litigated a number of important employment discrimination class actions. These include *U.S. v. City of New York*, No. 07-cv-2067, 2011 WL 4639832 (E.D.N.Y. Oct. 5, 2011) (successfully representing a class of black applicants for entry-level firefighter jobs who were discriminated against by the City of New York), *Hohider v. UPS*, 243 F.R.D. 147 (W.D. Pa. 2007), *reversed and remanded*, 574 F.3d 169 (3d Cir. 2009), where although the Third Circuit reversed certification of a nationwide class of Americans with Disabilities Act protected UPS employees, Ms. Scolnick was able to negotiate with UPS changes to its return to work policy with regard to injured workers.

Ms. Scolnick began her career by serving as a law clerk to the late Honorable Anthony Julian of the United States District Court in Massachusetts. Thereafter, she served as a trial attorney in the Civil Division of the United States Department of Justice, where she was lead counsel in several high-profile employment discrimination lawsuits against various U.S. agencies around the country.

Ms. Scolnick has been selected for the past two years in Thompson Reuter's "New York Super Lawyers."

Ms. Scolnick is admitted to practice in New York, New Jersey, and Massachusetts.

**DONALD A. BROGGI** is a partner in the firm's New York office. Mr. Broggi is a graduate of the University of Pittsburgh (B.A., 1990) and Duquesne University School of Law (J.D., 2000). He is engaged in the firm's complex securities, antitrust, and consumer litigation, including: *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-7789 (S.D.N.Y.), *In re: Priceline.com Inc. Securities Litigation*, No. 00-cv-1884 (D. Conn.), *Irvine v. ImClone Systems, Inc.*, No. 02-cv-0109 (S.D.N.Y.), *In re: Rubber Chemicals Antitrust Litigation*, No. C04-01648 (N.D. Cal.), *In re: Plastics Additives Antitrust Litigation*, No. 03-cv-2038 (E.D. Pa.), and *In re Washington Mutual Mortgage-Backed Securities Litigation*, No. 09-cv-0037 (W.D. Wash.), among others.

Mr. Broggi also works with the firm's institutional investor clients, including numerous public pension systems and Taft-Hartley funds throughout the United States to ensure their funds have proper safeguards in place to ensure against corporate malfeasance. Similarly, Mr. Broggi consults with institutional investors in the United States and Europe on issues relating to corporate fraud in the U.S. securities markets, as well as corporate governance issues and shareholder litigation. Mr. Broggi has lectured at institutional investor conferences throughout the United States on the value of shareholder activism as a necessary component of preventing corporate fraud abuses, including the Texas Association of Public Employee Retirement Systems, Georgia Association of Public Pension Trustees, Michigan Association of Public Retirement Systems, Illinois Public Pension Fund Association, and the Pennsylvania Association of County Controllers, among others.

Mr. Broggi is admitted to practice in New York and Pennsylvania.

**DEBORAH CLARK-WEINTRAUB** is a partner in the firm's New York office. Ms. Weintraub graduated from St. John's University, Queens, New York (B.A., *summa cum laude*, 1981; President's Award in recognition of achieving highest GPA among graduates of St. John's College of Liberal Arts and Science) and Hofstra Law School in Hempstead, New York (J.D., with distinction, 1986). While in law school, Ms. Weintraub was a member and research editor of the Hofstra Law Review. Following her graduation from Hofstra Law School, Ms. Weintraub served as a law clerk to the Honorable Jacob Mishler, United States District Judge for the Eastern District of New York (1986-1987). Ms. Weintraub is a member of the New York bar.

Ms. Weintraub has extensive experience in all types of class action litigation. Ms. Weintraub has served as lead counsel for investors in mortgage-backed securities (MBS) in litigation against MBS trustees for failure to pursue repurchase remedies with respect to mortgage loans in MBS trusts that breached representations and warranties. These matters include *Policemen's Annuity and Benefit Fund of the City of Chicago v. Bank of America, NA*, 1:12-cv-2865 (S.D.N.Y.), which recovered \$69 million for investors.

Ms. Weintraub is also currently representing investors in several ongoing securities class action cases including *Weston v. RCS Capital Corporation*, 1:14-cv-10136 (S.D.N.Y.); *ECD Investor Group v. Credit Suisse International*, 14-cv-8484 (S.D.N.Y.); and *In re Conn's, Inc. Sec. Litig.*, No. 4:14-cv-00548 (S.D. Tex.).

Ms. Weintraub has extensive securities class action experience and has acted as plaintiffs' co-lead counsel in numerous cases that have obtained substantial recoveries for defrauded investors. Ms. Weintraub was one of the lead counsel in *In re Oxford Health Plans, Inc. Securities Litigation*, MDL No. 1222 (S.D.N.Y.), in which a cash settlement of \$300 million was obtained on the eve of trial after more than five years of litigation. At the time, the \$300 million cash recovery was one of the largest recoveries ever achieved in a securities class action. The Honorable Charles L. Briant, Jr., who presided over this case described it as "perhaps the most heavily defended, ardently pursued defense of a similar case that I can recall." Ms. Weintraub also served plaintiffs' co-lead counsel in *In re CVS Corporation Securities Litigation*, No. 01-11464 (D. Mass.), in which a cash settlement of \$110 million was obtained for investors. Following the settlement in March 2006, CVS disclosed that the SEC had opened an inquiry into the manner in which CVS had accounted for a barter transaction, a subject of the class action suit, and that independent counsel to the firm's audit committee had concluded in December 2005 that various aspects of the company's accounting for the transaction were incorrect, leading to the resignations of the company's controller and treasurer.

Ms. Weintraub is the co-author of "Gender Bias and the Treatment of Women as Advocates," *Women in Law* (1998), and the "Dissenting Introduction" defending the merits of securities class action litigation contained in the 1994 monograph "Securities Class Actions: Abuses and Remedies," published by the National Legal Center for the Public Interest. She is a member of the Association of the Bar of the City of New York.

**DARYL F. SCOTT** graduated in 1981 from Vanderbilt University with a Bachelor of Arts in Economics. He received his Juris Doctorate from Creighton University School of Law in 1984, and a Masters of Taxation from Georgetown University Law Center in 1986. Mr. Scott is a partner involved in complex securities litigation at Scott+Scott. In addition to his work with the firm, Mr. Scott has specialized in private foundation and ERISA law. He was also formerly an executive officer of a private equity firm that held a majority interest in a number of significant corporations. Mr. Scott is admitted to the Supreme Court of Virginia and a member of the Virginia Bar Association and the Connecticut Bar Association.

**DEIRDRE DEVANEY** is a graduate of New York University (B.A., *cum laude*, 1990) and the University of Connecticut School of Law (J.D., with honors, 1998) where she was the managing editor of the Connecticut Journal of International Law. Ms. Devaney's experience includes commercial and probate litigation, as well as trusts and estates. Currently, Ms. Devaney's practice areas include commercial and securities litigation, including: *In re Priceline.com, Inc. Securities Litigation*, among others. Ms. Devaney is admitted to practice in Connecticut, New York, and the United States District Court for the District of Connecticut.

**GEOFFREY M. JOHNSON** is a partner in the firm's Ohio office. Mr. Johnson's practice focuses on shareholder derivative, corporate governance, and securities class action litigation. Mr. Johnson is also active in the firm's settlement and appellate practice groups.

Mr. Johnson has served as lead or co-lead counsel in several securities class action cases brought under Section 11 of the Securities Act of 1933, including *In re King Digital Entertainment plc Shareholder Litigation*, Case No. 15-544770 (Superior Court of California, San Francisco County), a shareholder lawsuit that settled for \$18.5 million after surviving two separate motions to dismiss, and *Rosenberg v. Cliffs Natural Resources, Inc.*, Case No. 14-1531 (Court of Common Pleas, Cuyahoga County, Ohio), a shareholder lawsuit that settled for \$10 million after the firm had engaged in extensive litigation and motion practice.

Mr. Johnson has been active in the firm's mortgage-backed securities litigation practice, serving as lead or co-lead counsel in mortgage-backed securities class action cases involving Washington Mutual (*In re Washington Mutual Mortgage-Backed Securities Litigation*, 2:09-cv-00037 (W. D. Wash.)) and Countrywide Financial (*Putnam Bank v. Countrywide Financial, Inc.*, No. 10-cv-302 (C.D. Cal.)). Mr. Johnson also helped develop the theories that the firm's pension fund clients have used to pursue class action cases against mortgage-backed security trustees. See *Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago v. Bank of New York Mellon* (Case No. 11-cv-05459 (S.D.N.Y.)); *Oklahoma Police Pension & Retirement System v. U.S. Bank NA* (Case No. 11-cv-8066 (S.D.N.Y.)).

Mr. Johnson has also served as lead or co-lead counsel in other major securities and ERISA cases, including: *In re Royal Dutch/Shell ERISA Litigation*, No. 04-1398 (D.N.J.), which settled for \$90 million and is one of the three largest recoveries ever obtained in an ERISA class action case; *In re Priceline Securities Litigation*, 00-cv-1884 (D. Conn.), which settled for \$80 million and is the largest class action securities settlement ever obtained in the State of Connecticut; and *In re General Motors ERISA Litigation*, 05-cv-71085 (E.D. Mich.), a case that settled for \$37.5 million and ranks among the largest ERISA class settlements ever obtained.

Mr. Johnson is a graduate of Grinnell College (B.A., Political Science with Honors, 1996) and the University of Chicago Law School (J.D., with Honors, 1999), where he served on the law review. Prior to joining Scott+Scott, Mr. Johnson clerked for the Honorable Karen Nelson Moore, United States Court of Appeals for the Sixth Circuit.

**AMANDA F. LAWRENCE** is a partner in the firm's Connecticut office. Ms. Lawrence is a graduate of Dartmouth College (B.A., *cum laude*, 1998) and Yale Law School (J.D., 2002). Ms. Lawrence has been at the firm since 2007 where she splits her time between antitrust and securities matters.

In the antitrust realm, Ms. Lawrence has been intricately involved in the "ISDAFix case" (*Alaska Electrical Pension Fund v. Bank of America*, 1:14-cv-07126-JMF-OTW (S.D.N.Y.)), taking depositions and working through expert discovery, including numerous *Daubert* motions and responses. That case has to date achieved over \$504.5 million in recovery from large financial institutions for investors. Ms. Lawrence is also a principal attorney litigating *Axiom Investment Advisors, LLC v. Deutsche Bank AG*, 1:15-cv-09945-LGS (S.D.N.Y.), which alleges manipulation of trading algorithms to benefit the defendant financial institution. She likewise has managed complex international investigations into suspected collusion or manipulation of financial markets. For example, she devoted herself to the international investigation of SSA bonds, which included multiple interviews with former managers of trading banks as well as extensive work with New York University professors to analyze trading data and unearth manipulation.

In her securities practice, Ms. Lawrence has worked on numerous Exchange Act and 1933 Act cases that have resulted in substantial settlements, including: *Police and Fire Retirement System of the City of Detroit v. Crane*, No. 13-cv-00945-VC (N.D. Cal.) (\$5.1 million settlement); *Rosenberg v. Cliffs Natural Resources, Inc.*, No. CV-14-828140 (Ohio Com. Pleas) (\$10 million settlement in 1933 Act case); *Rubenstein v. Oilsands Quest Inc.*, No. 11-1288 (S.D.N.Y.) (securities settlement of \$10.235 million); *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass-Through Certificates*, No. 09-cv-00037 (W.D. Wash.) (\$26 million securities class action settlement); and *In re TETRA Technologies, Inc. Securities Litig.*, No. 07-cv-00965 (S.D. Tex.) (\$8.25 million securities class action settlement); *In re LendingClub Corporation Shareholder Litig.*, No. CIV 537300 (Cal. Super., San Mateo) (\$125 million securities class action settlement); and *In Re: FireEye, Inc. Securities Litig.*, No. 1-14-cv-066866 (Cal. Super., Santa Clara) (\$10.25 million securities class action settlement).

In addition to antitrust and securities matters, Ms. Lawrence has also worked on consumer cases that have resulted in significant settlements for the affected classes. For example, Ms. Lawrence helped achieve a settlement in *Vulcan Society, Inc. v. The City of New York*, No. 07-CV-2067 (E.D.N.Y.) that brought both monetary and injunctive relief to a class of African American and Hispanic firefighters in New York City, as well as a settlement in *In re Prudential Insurance Company of America SGLI/VGLI Contract Litigation*, No. 3:11-md-02208-MAP (D. Mass.) that brought both forms of relief to relatives of deceased servicemen and women.

Ms. Lawrence has taught Trial Practice at the University of Connecticut School of Law and is very actively involved in her community, particularly in recreational organizations and events. A five-time NCAA National Champion cyclist who has raced throughout the United States,

Europe, Bermuda, and Pakistan, Ms. Lawrence is now an avid endurance athlete. She has competed in dozens of marathons, including the New York City Marathon and the Boston Marathon, and in 16 full-distance Ironman competitions – four of which were at the Ironman World Championships in Kona, Hawaii.

She is licensed to practice in Connecticut and Massachusetts, as well as the District of Connecticut, District of Massachusetts, and the Southern District of New York. Additionally, she is admitted to the Ninth and First Circuit Courts of Appeals, before which she has argued.

**ERIN GREEN COMITE** is a partner in the firm's Connecticut office. Ms. Comite is a graduate of Dartmouth College (B.A., *magna cum laude*, 1994) and the University of Washington School of Law (J.D., 2002). Ms. Comite litigates complex class actions throughout the United States, representing the rights of shareholders, employees, consumers, and other individuals harmed by corporate misrepresentation and malfeasance.

Ms. Comite currently serves in a leadership role in a number of complex class actions including: *First Choice Federal Credit Union v. The Wendy's Company*, No. 16-cv-00506 (W.D. Pa.), co-lead counsel on behalf of financial institutions arising out of data breach; *In Re Arby's Restaurant Group, Inc. Litigation*, No. 17-mi-55555 (N.D. Ga.), member of Plaintiffs' Executive Committee on behalf of financial institutions arising out of a data breach, *In re Equifax, Inc. Customer Data Security Breach Litigation*, MDL No. 2800 (N.D. Ga.), Chair of Law and Briefing Committee; *Forth v. Walgreen Co, Inc.*, No. 1:17-cv-02246 (N.D. Ill.), co-lead counsel, asserting claims on behalf of class of consumers alleging overcharge for medically necessary, covered prescription drugs; and *Aquilina v. Certain Underwriters at Lloyd's London*, No. 1:18-cv-00496 (D. Haw.), co-lead counsel, alleging that insurers, brokers, and agents improperly steered insureds into surplus lines insurance.

Recently, Ms. Comite has played a significant role in the prosecution of consumer class cases such as: *In re The Home Depot, Inc., Customer Data Security Breach Litigation*, MDL No. 2583 (N.D. Ga.) (\$27.25 million settlement) and *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 2522 (D. Minn.) (\$59 million settlement), two of the largest data breaches impacting consumer personal data to date; *Greater Chautauqua Federal Credit Union v. Kmart Corporation*, No. 15-cv-02228 (N.D. Ill.), Chair of the Plaintiffs' Steering Committee (\$8.1 million settlement), *Howerton v. Cargill, Inc.*, No. 13-cv-00336 (D. Haw.) (\$6.1 settlement), *Murr v. Capital One Bank (USA), N.A.*, No. 13-cv-1091 (E.D. Va.) (\$7.3 million settlement); and *In re Nutella Mktg. & Sales Practices Litig.*, No. 11-cv-01086 (D.N.J.) (\$2.5 million settlement). Ms. Comite's appellate victories in consumer class actions include *Chavez v. Nestle USA, Inc.*, 511 F. App'x 606 (9th Cir. 2013) (achieving a reversal of dismissal), and *In re Nutella Mktg. & Sales Practices Litig.*, 2014 WL 4801262 (3d Cir. Sept. 29, 2014) (defending settlement from professional objectors).

Since joining Scott+Scott in 2002, she has litigated such cases as *In re Priceline.com Securities Litigation* (\$80 million settlement); *Schnall v. Annuity and Life Re (Holdings) Ltd.* (\$27 million settlement); and *In re Qwest Communications International, Inc.* (settlement obtaining \$25 million for the company and achieving corporate governance reforms aimed at ensuring board independence). While Ms. Comite is experienced in all aspects of complex pre-trial

litigation, she is particularly accomplished in achieving favorable results in discovery disputes. In *Hohider v. United Parcel Service, Inc.*, Ms. Comite spearheaded a nearly year-long investigation into every facet of UPS's preservation methods, requiring intensive, full-time efforts by a team of attorneys and paralegals well beyond that required in the normal course of pre-trial litigation. Ms. Comite assisted in devising the plan of investigation in weekly conference calls with the Special Master, coordinated the review of over 30,000 documents that uncovered a blatant trail of deception and prepared dozens of briefs to describe the spoliation and its ramifications on the case to the Special Master. In reaction to UPS's flagrant discovery abuses brought to light through the investigation, the Court conditioned the parties' settlement of the three individual ADA case on UPS adopting and implementing preservation practices that passed the approval of the Special Master.

Prior to entering law school, Ms. Comite served in the White House as Assistant to the Special Counsel to President Clinton. In that capacity, she handled matters related to the White House's response to investigations, including four independent counsel investigations, a Justice Department task force investigation, two major oversight investigations by the House of Representatives and the Senate, and several other congressional oversight investigations.

Ms. Comite's volunteer activities have included assisting immigrant women, as survivors of domestic violence, with temporary residency applications as well as counseling sexual assault survivors. Currently, Ms. Comite supports Connecticut Children's Medical Center and March of Dimes/March for Babies.

Ms. Comite is licensed to practice in the State of Connecticut and is admitted to practice in the U.S. District Court for the District of Connecticut, the Southern District of New York, the District of Colorado, the Eastern District of Wisconsin, and the U.S. Court of Appeals for the Second, Third, Ninth, and Eleventh Circuits.

**THOMAS LAUGHLIN** is a partner in the firm's New York office. Mr. Laughlin is a graduate of Yale University (B.A. History, *cum laude*, 2001) and New York University School of Law (J.D., *cum laude*, 2005). After graduating from law school, Mr. Laughlin clerked for the Honorable Irma E. Gonzalez, United States District Court Judge for the Southern District of California.

Mr. Laughlin's practice focuses on securities class action, shareholder derivative, ERISA and other complex commercial litigation. While at Scott+Scott, Mr. Laughlin has worked on several cases that have achieved notable victories, including *Cornwell v. Credit Suisse*, No. 08-3758 (S.D.N.Y.) (securities settlement of \$70 million), *Rubenstein v. Oilsands Quest Inc.*, No. 11-1288 (S.D.N.Y.) (securities settlement of \$10.235 million) *Plymouth County Contributory Ret. Sys. v. Hassan*, No. 08-1022 (D.N.J.) (corporate governance reform); and *Garcia v. Carrion*, No. 09-1507 (D.P.R.) (corporate governance reform). Mr. Laughlin is a member of the New York bar and is admitted to practice in the Southern District of New York and the Eastern District of New York.

Mr. Laughlin also has significant appellate experience, having represented clients in connection with several appellate victories, including *Cottrell v. Duke*, 737 F.3d 1238 (8th Cir. 2013);

*Westmoreland County Employee Retir. Sys. v. Parkinson*, 727 F.3d 719 (7th Cir. 2013); *Pfeil v. State Street Bank and Trust Co.*, 671 F.3d 585 (6th Cir. 2012); and *King v. VeriFone Holdings, Inc.*, 12 A.3d 1140 (Del. Supr. 2011).

In 2014, Mr. Laughlin was co-chair of a 13-day bench trial in *Bankers' Bank Northeast v. Berry, Dunn, McNeil & Parker, LLC*, No. 12-cv-00127 (D. Me.). Mr. Laughlin represented a consortium of 10 community banks asserting negligence and professional malpractice claims against the former officers and directors of a bank and its auditor in connection with an \$18 million loan made to that bank in September 2008. Among other things, Mr. Laughlin conducted the cross-examination of all three witnesses from the defendant's auditing firm and the direct examination of plaintiff's auditing expert. The parties to the action succeeded in resolving the action after trial.

**MAX SCHWARTZ** is a partner based in New York. His main practice area is complex civil litigation, with an emphasis on financial products and services. He also counsels investment firms and institutional investors on strategies to enhance returns, or recoup losses, through a variety of legal actions.

Following the financial crisis, Mr. Schwartz served as lead counsel in several cases that set important precedents regarding mortgage-backed securities. He argued the first cases to find that securitization trustees must seek to have defective mortgages repurchased from MBS trusts. These efforts recently led to the recovery of \$69 million for investors in Washington Mutual MBS and \$6 million for investors in Bear Stearns MBS. *Policemen's Annuity and Benefit Fund of the City of Chicago v. Bank of America, NA*, 1:12-cv-2865 (S.D.N.Y.); *Oklahoma Police Pension and Retirement System v. U.S. Bank National Association*, 1:11-cv-8066 (S.D.N.Y.).

Currently, Mr. Schwartz represents investment firms pursuing claims against MBS servicers. He also represents plaintiffs in a securities action against Nicholas Schorsch and RCS Capital Corp., among others. *Weston v. RCS Capital Corp.*, 1:14-cv-10136 (S.D.N.Y.).

Mr. Schwartz has substantial experience in competition and antitrust matters as well. He was part of the team that secured a \$590 million settlement stemming from allegations that several of the largest leveraged buyouts were subject to collusion. *Dahl v. Bain Capital Partners, LLC*, 1:07-cv-12388 (D. Mass.). In addition, Mr. Schwartz has advised clients in antitrust matters ranging from pharmaceuticals to precious metals and has advised companies seeking merger review before a number of regulatory agencies.

*Super Lawyers* named Mr. Schwartz a Rising Star. The Legal Aid Society also recognized him with a Pro Bono Service Award for work before the New York Court of Appeals.

Mr. Schwartz holds a B.A. from Columbia University (*cum laude*), and a J.D. from New York University School of Law.

**DAVID HOWE** is a competition, EU, and public lawyer, and Senior Consultant at Scott+Scott Europe. He trained at Freshfields Bruckhaus Deringer LLP and, after qualification, spent a further eight years in the competition and dispute resolution teams there.

David has acted for a range of multinational clients on the full spectrum of competition investigations (in both the UK and internationally) litigation and advice. He has conducted competition damages claims in the English High Court, Court of Appeal and Competition Appeal Tribunal, and also appeared in the European Court of Justice. He acted for Roche on its defence of litigation arising out of the Vitamins cartel (including in the Devenish litigation, which ruled on the availability of restitutionary and exemplary damages in follow-on claims) and, for EWS in its defence of claims brought by the administrators of Enron for damage following EWS' abuse of dominance (the first follow-on damages action to go to trial in the Competition Appeal Tribunal). He has published several articles on competition law, including in relation to the new EU Damages Directive.

David also has significant wider expertise, including in bribery, public and regulatory law, and human rights matters. For instance, he was the lead associate co-ordinating a multi-jurisdictional regulatory and public law strategy for a major consumer products company, and has acted on a number of judicial reviews for a range of clients, including (as lead associate) on a significant judicial review of the lawfulness of domestic consumer products legislation, relying primarily on EU free movement and human rights grounds. In addition to "classic" human rights claims, David also has expertise in the evolving body of hard and soft law arising out of the UN "Ruggie Principles" on Business and Human Rights, having assisted a major technology company on a full Ruggie-compliant assessment of, and mitigation strategy for, a new project.

David attended Oxford University. He studied Law and French Law, was appointed a scholar, and graduated in 2003 with First Class Honours (being placed in the top 3% of his year), and a Diploma in French Law from the Universite Pantheon-Assas (Paris II). After a year completing professional qualifications, he returned to Oxford University to study the BCL (Oxford University's LLM equivalent), graduating in 2005 with a Distinction and a university prize, and was subsequently short-listed for the All Souls Prize Fellowship. In the early years of his practice at Freshfields, David also completed an LLM in European Law at Kings College London.

**TOM SOUTHWELL** is a partner in Scott+Scott Europe LLP's London office.

Tom specialises in international arbitration and has represented individuals, corporate clients, and financial institutions in arbitration proceedings under the rules of the major arbitral institutions and before all levels of the English Courts. He has particular expertise in the oil and gas, energy and financial services sectors, and in relation to disputes arising out of share sale transactions, joint ventures, and civil fraud.

Tom also acts in competition damages litigation and is currently acting for a number of potential claimants in follow-on damages actions arising from the Trucks cartel.

Before joining Scott+Scott, Tom was a member of the International Litigation and Arbitration group at Skadden, Arps, Slate, Meagher & Flom (UK) LLP, in London.

**DAVID H. GOLDBERGER** is an associate in Scott+Scott's San Diego office. Currently, Mr. Goldberger's practice is focused on antitrust litigation, initial case investigations, and other special projects.

Representative actions include *Kleen Products LLC v. Packaging Corporation of America*, No. 10-cv-5711 (N.D. Ill.), an action challenging price-fixing in the containerboard industry, and *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420 (N.D. Cal.), an action challenging price-fixing of Li-Ion batteries. Mr. Goldberger has also worked on antitrust cases involving delayed generic drug entry, such as *Mylan Pharmaceuticals Inc. v. Warner Chilcott Public Ltd. Co.*, No. 12-cv-3824 (E.D. Pa.) (\$8 million settlement) and *In re Prograf Antitrust Litig.*, No. 1:11-md-02242 (D. Mass.).

Previously, Mr. Goldberger was active in Scott+Scott's securities fraud and ERISA practice, including *In re: Priceline.com Securities Litigation*, 03-cv-1884 (D. Conn.) (\$80 million settlement), *Alaska Electrical Pension Fund v. Pharmacia Corporation*, No. 03-1519 (D.N.J.) (\$164 million settlement), and *In re: General Motors ERISA Litigation*, No. 05-71085 (E.D. Mich.) (resulting in significant enhancements to retirement plan administration in addition to \$37.5 million settlement for plan participants).

Mr. Goldberger was also a member of Scott+Scott's institutional investor relations staff, providing the Firm's many institutional clients with assistance in various matters pertaining to their involvement in complex civil litigations.

Mr. Goldberger is also a frequent contributing author to Market+Litigation, Scott+Scott's monthly client newsletter.

Mr. Goldberger graduated from the University of Colorado (B.A., 1999) and California Western School of Law (J.D., 2002). Mr. Goldberger is admitted to practice by the Supreme Court of the State of California and in all California United States District Courts.

A San Diego native, Mr. Goldberger was a founding member of the Torrey Pines High School "Friends of the Library" and coaches youth sports in his spare time.

**JULIE A. KEARNS** has been litigating complex class action cases, focusing primarily on violations of federal antitrust and securities laws, since 2006. She also has experience handling civil matters in California state court, and is located in Scott+Scott's San Diego office. Ms. Kearns has been recognized as a Rising Star in the 2015, 2016, 2017, and 2018 editions of Super Lawyers. She was also honored by the San Diego Business Journal as Best of the Bar in 2015.

At Scott+Scott, Ms. Kearns presently devotes much of her time representing investors in cases involving the manipulation of financial benchmarks by numerous major banks, including *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-7789 (S.D.N.Y) and *Alaska Elec. Pension Fund v. Bank of America Corp.*, No. 14-cv-7126 (S.D.N.Y).

A native Southern Californian, Ms. Kearns earned her Bachelor of Arts degree from the University of California, Santa Barbara, in 2003, with a double major in Political Science and

Law & Society. She graduated *cum laude* from Thomas Jefferson School of Law in 2006. During law school, Ms. Kearns served as Executive Board Co-Chair of the Moot Court Society, and participated in multiple competitions across the country. She also served as judicial intern to the Honorable Judge William S. Cannon, who oversaw civil matters in the Superior Court of California, County of San Diego. She completed internships at various public defender entities at both the state and federal levels, and drafted sponsorship agreements and similar documents as legal intern for the local minor league ice hockey team, the San Diego Gulls.

As an avid animal lover and supporter of animal rights, Ms. Kearns has served as *pro bono* volunteer attorney in association with the non-profit association Expand Animal Rights Now (“EARN”) since 2016. She is a long-time supporter of the San Diego Humane Society, the San Diego Zoological Society, the ASPCA, and other similar organizations. Ms. Kearns has also made presentations to middle and high school students around San Diego County as part of the annual, non-partisan Constitution Day event organized by the San Diego ACLU.

Ms. Kearns is licensed to practice law in the state of California, and is admitted to the U.S. District Court for the Southern, Central, and Northern Districts of California, the District of Colorado, and the U.S. Court of Appeals for the Fifth Circuit.

**CIAN MANSFIELD** is a senior associate in Scott+Scott Europe LLP’s London office. He specialises in competition damages litigation before the English High Court, Competition Appeal Tribunal, and the Court of Appeal.

Cian is currently acting as lead associate for a large number of retailers in their claims in the English High Court against Visa and MasterCard in relation to anti-competitive interchange fees; and as lead associate on behalf of a number of potential claimants in follow-on damage actions arising from the Trucks cartel.

Prior to joining Scott+Scott Europe LLP, Cian spent over six years in the London office of Freshfields Bruckhaus Deringer LLP. During his time at Freshfields, Cian worked on a number of competition damages claims arising from European Commission infringement decisions in relation to a number of cartels, including in the energy and industrial sectors. He also acted in a number of investigations, both internal investigations and those brought by international regulators (including the European Commission and the Competition and Markets Authority), and on pieces of general commercial litigation.

Cian also has extensive *pro bono* experience. He currently acts as an advocate on behalf of failed and pending asylum seekers at the Asylum Support Tribunal as a member of the charity, the Asylum Support Appeals Project. While at Freshfields, Cian worked on UK Supreme Court interventions for the Office of the Children’s Commissioner and the Open Society Justice Initiative.

Cian attended University College Dublin, Ireland and graduated in 2007 with a Bachelors of Civil Law (European Legal Studies) (First Class Honours). As part of his degree he spent a year studying at the University of Lausanne in Switzerland. Cian has an LL.M from the University of Cambridge and a Postgraduate Diploma in EU Competition Law from King’s College London.

Following his LL.M, Cian completed a five-month *stage* (internship) at the Legal Service of the European Commission in Brussels.

Cian is admitted to practice in England & Wales and the Republic of Ireland.

**THOMAS K. BOARDMAN** is an associate in the Scott+Scott's New York office, focusing on antitrust litigation. At his prior firm, Mr. Boardman was a member of the trial team in *In re TFT-LCD (Flat Panel) Antitrust Litigation*. For his work on that case, Mr. Boardman was nominated by Consumer Attorneys of California as a finalist for Consumer Attorney of the Year. Mr. Boardman was also an instrumental part of the lead counsel team in *In re Potash Antitrust Litigation (II)*, a case that featured a unanimous victory before an *en banc* panel of the Seventh Circuit, resulting in one of the most influential antitrust appellate opinions in recent memory. The case ended in \$90 million in settlements.

At Scott+Scott, Mr. Boardman represents plaintiff-investors in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* and represents opt-out plaintiffs in *Mag Instrument Inc v. The Goldman Sachs Group Inc.* Mr. Boardman also represents indirect purchaser plaintiffs in *In re Lithium Ion Batteries Antitrust Litigation*.

Mr. Boardman received his Bachelor of Arts degree from Vassar College in 2004, majoring in Political Science and Film Studies. He received his Juris Doctorate from the University of California, Hastings College of the Law in 2009. While at Hastings, Mr. Boardman was a member of the Hastings Science and Technology Law Journal and worked as a research assistant to professors Geoffrey C. Hazard, Jr. and Rory K. Little. Mr. Boardman is a member of the following Bars: California, New York, Ninth Circuit Court of Appeals, Central District of California, Northern District of California, and Southern District of California. He is also a member of the following professional associations: ABA Antitrust Section – Model Jury Instruction Revision Task Force, ABA Antitrust Section – Young Lawyers Division – Litigation Committee, ABA Antitrust Section – Young Lawyers Division – Civil Practice and Procedure Committee, New York State Bar Association – Antitrust Section, Bar Association of San Francisco, and Public Justice Foundation.

Mr. Boardman has co-authored the following articles: “Reverse Engineering Your Antitrust Case: Plan for Trial Even Before You File Your Case,” *Antitrust Magazine*, Spring 2014, Vol. 28, No. 2, with Bruce L. Simon; and “Class Action for Health Professionals,” chapter from *Advocacy Strategies for Health and Mental Health Professionals*, Springer Publishing Co., 2011, with Bruce L. Simon, Stuart L. Lustig, Editor.

Prior to joining Scott+Scott, Mr. Boardman worked at Pearson, Simon & Warshaw, LLP in San Francisco and served as a judicial law clerk to the Hon. Christina Reiss in United States District Court, District of Vermont.

Mr. Boardman enjoys running and regularly does so for charity. He has run several races to fundraise for various causes, including the New York City Marathon (National Multiple Sclerosis Foundation) and the Boston Marathon (Cystic Fibrosis Foundation).

**PATRICK McGAHAN** is an associate in Scott+Scott's London office. He specialises in competition damages litigation before the English High Court, Competition Appeal Tribunal and the Court of Appeal. Mr. McGahan works closely with other members of the firm's Antitrust and Competition Practice in counseling corporate and institutional clients, evaluating potential claims and developing strategies to recover losses caused by anticompetitive conduct. He has also acted for clients in a variety of arbitrations (both investment treaty and commercial) and pieces of general commercial litigation.

Mr. McGahan is presently representing numerous clients who may have European claims arising from the manipulation of the foreign exchange market. He is also acting for various national and multinational retailers in relation to competition damages claims arising from Visa and MasterCard's card payment schemes.

Prior to joining Scott+Scott, Mr. McGahan spent four years in the London office of Freshfields Bruckhaus Deringer LLP. During this time he acted in many of the leading English competition damages cases, including *National Grid Electricity Transmission Plc v ABB Ltd*. He also acted for numerous clients in competition law investigations, both internal investigations and those brought by the Competition and Markets Authority, the European Commission, and other regulators.

Mr. McGahan attended the University of Queensland and graduated in 2010 with a Bachelor of Laws (First Class Honours) and a Bachelor of Arts (Economics/Political Science). He then spent a year as the Associate to His Honour Justice Andrew Greenwood at the Federal Court of Australia. Mr. McGahan has a Postgraduate Diploma in Competition Law from King's College London.

Mr. McGahan is admitted to practice in England and Wales and in Queensland, Australia.

**JAMES HAIN-COLE** is located in Scott+Scott's London office. He specialises in competition damages litigation before the English Courts and the Competition Appeal Tribunal. Mr. Hain-Cole works with the firm's Antitrust and Competition Practice in advising international clients on their potential to claim damages arising from anticompetitive conduct and working with them to design an effective strategy to compensate them for losses arising from such conduct. He has also has experience in commercial arbitration and general commercial litigation.

Prior to working with Scott+Scott, Mr. Hain-Cole spent two and a half years at Cuatrecasas in Madrid, where he advised on competition damages claims before the courts of Spain, England and Italy and also formed part of the team that drafted the legal section of the "*Study on the Passing-on of Overcharges*" for the European Commission. Prior to that, Mr. Hain-Cole spent six years in the London office of Freshfields Bruckhaus Deringer LLP, where he advised clients in some of the leading competition damages before the English courts and tribunals, including *Deutsche Bahn AG and others v Morgan Advanced Materials Plc* and *Cooper Tire and Rubber Company Europe Ltd and others v. Dow Deutschland Inc and others*. He also acted for a major financial institution in competition law investigations before the European Commission and other competition regulators worldwide, including in the North America and Asia.

Mr. Hain-Cole attended the University of St. Andrews and graduated in 2006 with a Master of Arts (First Class Honours) in International Relations and Modern History. He then gained the Graduate Diploma in Law and the Legal Practice Course at BPP Law School, London. In 2015, obtained the BASL DMU Postgraduate Certificate in Sports Law from De Montfort University, Leicester.

Mr. Hain-Cole is admitted to practice in England and Wales. He has professional proficiency in Spanish.

**JOHN JASNOCH**'s practice areas include securities and antitrust class actions, shareholder derivative actions, and other complex litigation. Mr. Jasnoch represented plaintiffs in *In re Washington Mutual Mortgage-Backed Securities Litigation*, Case No. 2:09-cv-00037 (W.D. Washington), a case that was litigated through summary judgment and settled on the eve of trial for \$26 million. Mr. Jasnoch was also one of the lead attorneys that secured a \$7.68 million settlement in *In re Pacific Biosciences Securities Litigation*, Case No. CIV509210 (San Mateo County, California). Other cases Mr. Jasnoch has worked on that have achieved notable results include: *West Palm Beach Police Pension Fund v. Cardionet, Inc.*, Case No. 37-2010-00086836-CU-SL-CTL (San Diego County, California) (\$7.25 million settlement), *Hodges v. Akeena Solar*, 09-cv-2147 (N.D. Cal.) (\$4.77 million settlement), *Plymouth County Contributory Ret. Sys. v. Hassan*, No. 08-1022 (D.N.J.) (corporate governance reform), and *In re HQ Sustainable Maritime Industries, Inc., Derivative Litigation*, Case No. 11-2-16742-9 (King County, Washington) (\$2.75 million settlement).

As an active member of the Consumer Attorneys of California, Mr. Jasnoch has prepared and submitted successful *amicus curie* briefs to the Ninth Circuit Court of Appeals, including on California's Anti-SLAPP law and consumer protection issues.

Mr. Jasnoch graduated *cum laude* from Creighton University with a Bachelor of Arts in Political Science in 2007. He received his Juris Doctorate from The University of Nebraska College of Law in 2011 and is a member of the California Bar.

**MICHAEL G. BURNETT** is a graduate of Creighton University (B.A., 1981) and Creighton University School of Law (J.D., 1984). Mr. Burnett practices complex securities litigation at the firm where he consults with the firm's institutional clients on corporate fraud in the securities markets as well as corporate governance issues. In addition to his work with the firm, Mr. Burnett has specialized in intellectual property and related law. Mr. Burnett is admitted to the Nebraska Supreme Court and United States District Court, District of Nebraska. He is a member of the Nebraska Bar Association.

**DOUGLAS CAMPBELL** is an associate in Scott+Scott's London office who specialises in competition damages litigation. Douglas regularly works with clients and counsel, considering competition and regulatory claims, assessing their merits and viability. He has knowledge of the third-party funding sector and has experience of working on funded cases and preparing proposals for third-party funding.

Douglas is currently representing a number of clients with potential claims against financial institutions for manipulation of the foreign exchange market, and acting for several retailers with claims against Visa and Mastercard in respect of charges and rules imposed in respect of their card payment schemes.

Prior to joining Scott+Scott, Douglas spent five years working for a major UK law firm in Edinburgh and London. During this time he acted in a number of competition damages and general commercial claims in the English High Court and Court of Appeal. His experience includes acting for a Part 20 Defendant airline in the *Air Cargo* follow-on and stand-alone damages claims and acting for a FTSE 250 listed company coordinating a claim against a major UK bank for manipulation of the foreign exchange market. Douglas represented clients across a broad range of industries in the public and private sectors.

Douglas studied law at the University of Edinburgh and spent a year studying law and politics at Université Paul Cézanne Aix-Marseille III in France.

Douglas is admitted to practise in England & Wales and Scotland.

**J. ALEX VARGAS** serves as Scott+Scott's Director of Investigations. He has devoted over a decade of his career investigating claims on behalf of institutional investors and other stakeholders. At Scott+Scott, Mr. Vargas conducts and oversees investigations across all practice groups. Prior to joining the firm, Mr. Vargas was involved in several high-profile securities fraud cases, including one where he served as the principal investigator in connection with a 14-year litigation, resulting in the largest securities fraud settlement following a trial; a record \$1.575 billion recovery in *Jaffe v. Household Int'l, Inc.*, No. 02-C-05893 (N.D. Ill.).

Representative antitrust class actions include: *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789 (S.D.N.Y.); *In re SSA Bonds Antitrust Litigation*, No. 1:16-cv-03711-ER (S.D.N.Y.); and *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 2:16-cb-27240-CMR (E.D. Pa.).

Representative securities class actions include: *Ret. Bd. of the Policemen's Annuity and Benefit Fund of Chicago v. FXCM Inc.*, No. 1:15-cv-03599-KMW (S.D.N.Y.); *Union Asset Management Holding AG v. SanDisk LLC*, No. 3:15-cv-01455-VC (N.D. Cal.); *In re LendingClub Corp. Shareholder Litig.*, No. CIV537300 (Cal. Super. Ct., San Mateo County) (settlement of \$125 million); *In re MobileIron, Inc. S'holder Litig.*, No. 1-15-cv-284001 (Cal. Super. Ct., Santa Clara County) (settlement of \$7.5 million); *In re Endochoice Holdings, Inc. Sec. Litig.*, C.A. No. 2016 cv 277772 (Ga. Super. Ct. Fulton County); and *Rubenstein v. Oilsands Quest Inc.*, No. 11-cv-288 (S.D.N.Y.) (settlement of \$10.235 million).

Representative consumer and data breach class actions include *In re Pacific Coast Oil Trust Sec. Lit.*, No. BC550418 (Cal. Sup. Ct., Los Angeles County) (settlement of \$7.6 million); *Greater Chautauqua Federal Credit Union v. Kmart Corp.*, No. 15-cv-2228 (N.D. Ill.) (settlement of \$5.2 million); *WinSouth Credit Union v. MAPCO Express, Inc.*, No. 14-cv-1573 (M.D. Tenn.) (largest dollar-per-card settlement obtained on behalf of financial institutions involving data breach of credit and debit card information); *Selco Community Credit Union v. Noodles & Co.*,

C.A. No. 1:16-cv-2247 (D. Colo.); and *First Choice Fed. Credit Union v. The Wendy's Co.*, No. 2:16-cv-00506 (W.D. Pa.).

Mr. Vargas graduated from the University of San Diego (B.A., 1997) and the University of San Diego School of Law (J.D., 2004). He is admitted to practice in New York, California, and the District of Columbia.

**STEPHANIE HACKETT** is an associate in Scott+Scott's San Diego office. She primarily practices in the area of antitrust litigation on behalf of classes and individual plaintiffs.

Ms. Hackett has represented class plaintiffs in *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388 (D. Mass.) (\$590.5 million settlement) and *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co.*, No. 12-3824 (E.D. Pa.) (\$8 million settlement). She represented corporate opt-out clients in *In re Polychloroprene Rubber (CR) Antitrust Litigation*, MDL No. 1642 (D. Conn.); and *In re Plastics Additives (No. II) Antitrust Litigation*, MDL No. 1684 (E.D. Pa.).

Ms. Hackett's current cases include representing class plaintiffs in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789 (S.D.N.Y.), an action challenging collusion regarding foreign exchange rates, and *Alaska Electrical Pension Fund v. Bank of America Corporation*, No. 1:14-cv-07126 (S.D.N.Y.), an action challenging collusion regarding the setting of the ISDAfix benchmark interest rate. Ms. Hackett also represents corporate opt-out clients in *In re: Aluminum Warehousing Antitrust Litigation*, MDL No. 2481 (S.D.N.Y.), a case challenging collusion regarding the spot metal price of physically-delivered aluminum.

As a part of her *pro bono* work, Ms. Hackett has worked with the San Diego Volunteer Lawyer Program, providing assistance to immigrant victims of domestic violence, and the ABA Immigration Justice Project, where she obtained a grant of asylum on behalf of her client.

Ms. Hackett is an active member of the American Bar Association's Antitrust Section and the San Diego La Raza Lawyers Association. She is also a contributing author to Market+Litigation, Scott+Scott's monthly newsletter.

Ms. Hackett is a graduate of the University of Iowa (B.S. Political Science, International Business Certificate, 2001) and of the University of Iowa College of Law (J.D., with distinction, 2005), where she was a recipient of the Willard L. Boyd Public Service Distinction award. While obtaining her law degree, Ms. Hackett worked as a judicial extern for the Honorable Celeste F. Bremer, United States District Court for the Southern District of Iowa. Ms. Hackett is admitted to practice in California.

In addition to her legal education, Ms. Hackett has engaged in accounting study and passed all four parts of the CPA exam. This background has proved particularly useful in cases involving the financial services industry.

**HAL CUNNINGHAM** is a graduate of Murray State (B.S. Biological Chemistry) and the University of San Diego School of Law. Prior to joining Scott+Scott, Mr. Cunningham was engaged in research and development in the chemical and pharmaceutical industries.

Mr. Cunningham's practice focuses on securities class action, shareholder derivative, and consumer litigation. While at Scott+Scott, Mr. Cunningham has worked on several cases that have achieved notable results, including *In re Washington Mutual Mortgage Backed Securities Litigation*, No. C09-0037 (W.D. Wash.) (securities settlement of \$26 million). Mr. Cunningham is also involved in the Firm's securities lead plaintiff motion practice, having briefed several successful lead plaintiff applications for the firm's institutional and individual clients.

Mr. Cunningham is a regular contributor to and editor of Scott+Scott's monthly newsletter, MARKET+LITIGATION.

Mr. Cunningham is admitted to practice in California.

**S. SINAI MEGIBOW** is an Investigator in Scott+Scott's Investigations Department. He has extensive experience conducting a wide range of investigations, including securities fraud, internal investigations, antitrust matters, Foreign Corrupt Practices Act compliance, corporate due diligence, and litigation intelligence. Prior to joining Scott+Scott, Sinai served as a Director in a global private investigation and intelligence consulting firm. Sinai began his career as an associate attorney practicing in the areas of White Collar Criminal matters and commercial litigation.

Mr. Megibow graduated from Tulane University (B.A., 1995), University of Chicago (M.A., 1998) and UCLA School of Law (J.D., 2001). He is admitted to practice in New York. He is also a Certified Fraud Examiner and a licensed private investigator in New York and Florida.

**YIFAN ("KATE") LV** is an associate in Scott+Scott's San Diego office. Her practice focuses on prosecuting antitrust actions with an emphasis on intercultural cartels.

Ms. Lv represents plaintiffs in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-7789 (S.D.N.Y), challenging foreign-exchange market manipulation by many global financial institutions. Ms. Lv also represents and advises the Firm's Asian clients.

Ms. Lv graduated from Tianjin University of Commerce, Tianjin, China, with a Dual Bachelors in Law and Economics in 2008, from Peoples University of China, Beijing, China with a Master in Law in June 2010, and from William & Mary School of Law in 2014.

Ms. Lv is bilingual, speaking fluent Chinese and English.

Ms. Lv is a member of the California, New York, and China Bars.

**MICHELLE CONSTON** is an associate at Scott+Scott's New York office, focusing on antitrust litigation.

Prior to joining Scott+Scott, Ms. Conston represented institutional investors, hedge funds, and individual investors in complex class action litigation arising under the Commodity Exchange Act, Sherman Act, RICO Act, and common law. She was heavily involved in litigating actions

alleging the manipulation of the London Interbank Offered Rate (“LIBOR”) for several currencies by large financial institutions (*e.g.*, *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y.) and *Sullivan v. Barclays plc*, No. 13-cv-00281 (S.D.N.Y.)), as well as an action alleging manipulation of the daily London Silver Fixing by the Fixing Banks and several other financial institutions (*In re London Silver Fixing, Ltd., Antitrust Litigation*, No. 14-md-02573 (S.D.N.Y.)).

At Scott+Scott, Ms. Conston presently devotes much of her time representing investors in cases involving the manipulation of financial benchmarks by numerous major banks, including *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-7789 (S.D.N.Y) and *Alaska Elec. Pension Fund v. Bank of America Corp.*, No. 14-cv-7126 (S.D.N.Y).

Ms. Conston is a graduate of Marist College (B.A., *magna cum laude*, 2010) and the University of Miami School of Law (J.D., *magna cum laude*, 2013). During law school, Ms. Conston served as a judicial intern for the Honorable Stephen T. Brown, the Chief Magistrate Judge of the United States District Court for the Southern District of Florida. Ms. Conston also served as a certified legal intern for the United States Attorney’s Office for the Southern District of Florida.

Ms. Conston is licensed to practice law in New York, New Jersey, and Florida, and is admitted to the U.S. District Court for the Southern District of New York.

**SCOTT JACOBSEN** is an associate in Scott+Scott’s New York office. Mr. Jacobsen practices in the areas of shareholder derivative actions, securities class action litigation, and other complex litigation.

While at Scott+Scott, Mr. Jacobsen has primarily focused on securities and derivative litigation, including investigation of corporate books and records to evaluate potential claims on behalf of shareholders. Cases include *International Union of Operating Engineers Local No. 478 Pension Fund v. McInerney*, C.A. No. 11901-VCN (Del. Ch. Jan 13, 2016) (derivatively on behalf of Genworth Financial Inc.); *Carlson v. Dipp*, No. 1:15-cv-14032 (D. Mass. Dec. 7, 2015) (securities class action); *Fernicola v. Hugin*, C.A. No. 11748-VCMR (Del. Ch. Nov. 24, 2015) (derivatively on behalf of Celgene Corp.); *Feldman v. Kulas*, C.A. No. 11614-VCG (Del. Ch. Oct. 15, 2015) (derivatively on behalf of Santander Consumer USA Holdings Inc.); *Fortunato v. Akebia Therapeutics, Inc.*, No. 1:15-cv-13501 (D. Mass. Oct. 5, 2015) (securities class action).

Mr. Jacobsen graduated from The George Washington University (B.A. English, *magna cum laude*; M.A., English) and William & Mary Law School (J.D. 2014). During law school, Mr. Jacobsen externed at the American Civil Liberties Union of Virginia and served as a staff member for the William & Mary Bill of Rights Journal.

Mr. Jacobsen is a member of the following professional associations: ABA Business Section and ABA Young Lawyers Division. Mr. Jacobsen is also a regular contributor to Scott+Scott’s monthly newsletter. He is admitted to practice in New Jersey, New York, and the United States District Court for the Southern District of New York.

**RHIANA SWARTZ** is an associate in the firm’s New York office. Ms. Swartz graduated *magna cum laude* from Brooklyn Law School in 2006, and received her B.A. from Swarthmore

College in 2000. After graduating from law school, Ms. Swartz clerked for the Honorable Joan M. Azrack in the Eastern District of New York.

Ms. Swartz's practice focuses on securities class actions and shareholder derivative actions.

Prior to joining Scott+Scott, Ms. Swartz was Senior Counsel in the Special Federal Litigation Division of the New York City Law Department, Office of Corporation Counsel, where she handled federal cases brought under 42 U.S.C. §1983 from initial receipt of complaint through trial verdict. Ms. Swartz settled more than 80 cases and conducted four federal trials. Ms. Swartz also spent more than four years as an Associate at Sullivan & Cromwell LLP in New York, representing major financial institutions in civil and regulatory matters involving securities, antitrust, corporate governance, and employment law issues.

Ms. Swartz is a member of the New York bar and is admitted to practice in the Southern District of New York, Eastern District of New York, and Second Circuit.

**SEAN T. MASSON** is an associate in Scott+Scott's New York office. Mr. Masson's practice focuses on securities class action, mass torts, and other complex commercial litigation. *Super Lawyers* has named Mr. Masson a Rising Star for four consecutive years (2015-2018) for his work as a securities class action litigator.

Prior to entering the private sector, Mr. Masson served as an Assistant District, successfully argued over 40 appeals in state and federal courts and gained extensive experience with large-scale government and regulatory investigations. Notable cases include: *People v. McKelvey* (upheld 75-year sentence for serial rapist preying on homeless women); *People v. Doyle* (affirming conviction for notorious fine art thief); and *People v. Wong* (affirming conviction of driving school instructor involved in hit and run of a child).

Mr. Masson graduated from Queens College (*summa cum laude*) and Hofstra University School of Law (*cum laude*). During law school, Mr. Masson served as the Senior Notes and Comments Editor of the *Hofstra Law Review* and won various awards during Moot Court competitions.

Mr. Masson's publications include:

*The Presidential Right of Publicity*, 2010 Boston College Intellectual Property & Technology Forum 012001.

Note, *Cracking Open the Golden Door: Revisiting U.S. Asylum Law's Response To China's One-Child Policy*, 37 Hofstra Law Review 1135 (2009).

**MARGARET (MAGGIE) FERRON** is an associate at the Firm's Connecticut office. Ms. Ferron is a graduate of Middlebury College (B.A., 2003) and the University of Connecticut School of Law (J.D., High Honors, 2009). During law school, Ms. Ferron worked for the Honorable Janet Bond Arterton of the U.S. District Court for the District of Connecticut and for the Iran Human Rights Documentation Center in New Haven, Connecticut. As an

undergraduate, she studied classical languages and history in Athens, Greece; as a law student, she studied international human rights law at Trinity College, Dublin, Ireland.

Prior to joining the firm, Ms. Ferron worked as a plaintiffs' employment lawyer in Hartford for several years. Her experience also encompasses municipal affairs and state grant compliance. Ms. Ferron practices in varied Connecticut state court matters as well as federal class actions. She is admitted to practice in Connecticut and the U.S. District Court for the District of Connecticut.

Ms. Ferron is a trustee of Joshua's Tract Conservation and Historic Trust, located in Mansfield, Connecticut. She successfully led an effort to build an accessible playground in Mansfield and enjoys trail running and reading with her family.

**LAUREN S. MCCABE** is an associate in Scott+Scott's New York office. Ms. McCabe's practice focuses on securities class actions.

Prior to joining Scott+Scott, Ms. McCabe practiced complex commercial litigation for ten years at the New York office of Gibson Dunn & Crutcher LLP.

Ms. McCabe graduated from Pepperdine University (*summa cum laude*) and New York University School of Law, where she was a McKay Scholar.

Ms. McCabe's publications include:

"*Justice Holland's Lasting Imprint on Corporate Law*," Delaware Business Court Insider (March 14, 2017).

**JING-LI YU** is an associate in the New York office where he focuses on shareholder derivative and federal securities litigation.

Mr. Yu is a graduate of the University of Pennsylvania (B.A., Economics, *cum laude*, 2001), University of Chicago (M.A., Social Sciences, 2005), and the University of Chicago Law School (J.D., 2010).

Prior to joining Scott+Scott, Mr. Yu was a litigation associate based in Wilmington, Delaware at a litigation boutique that primarily represented institutional plaintiffs, and before then, he was a litigation and investigations associate based in New York, New York at two international law firms that primarily represented institutional defendants.

Mr. Yu is admitted to practice before the States of Delaware and New York. He is also admitted to the United States District Courts for the Eastern District of New York and Southern District of New York, as well as the United States Court of Appeals for the Second Circuit.

**CAREY ALEXANDER** is an associate in Scott+Scott's New York office where he prosecutes complex consumer class actions with a focus on deceptive pricing and data breach litigation.

Mr. Alexander has worked closely with the leadership teams steering numerous class actions, including:

- *In re Equifax, Inc., Customer Data Security Breach Litigation*, No. 1:17-md-2800 (N.D. Ga.) (member of the Plaintiffs' Coordination and Discovery Committee);
- *First Choice Federal Credit Union v. The Wendy's Co.*, No. 2:16-cv-506 (W.D. Pa.) (settlement valued at \$50 million); and
- *Morrow v. Ann Inc.*, No. 1:16-cv-3340 (S.D.N.Y.) (settlement valued at \$7.1 million).

Before joining the bar, Mr. Alexander served as an editor of the widely acclaimed consumer-advocacy blog *The Consumerist*. He also served as a policy advisor to the Bronx Borough President and worked as part of the National Campaign to Restore Civil Rights.

Mr. Alexander received his B.A. from Skidmore College in 2004, and graduated *magna cum laude* from the St. John's University School of Law in 2012. During law school, Mr. Alexander served as Associate Managing Editor of the *St. John's Law Review*. Mr. Alexander's student note, *Abusive: Dodd-Frank Section 1031 and the Continuing Struggle to Protect Consumers*, 85 St. John's L. Rev. 1105 (2012), has been cited in judicial opinions and several legal journals, including the *Harvard Law Review*.

Mr. Alexander is admitted to practice in the State of New York and in several federal courts, including the District of Colorado, New York's Southern, Eastern, and Western Districts, the Northern District of Illinois, the Eastern District of Wisconsin, and the Ninth Circuit Court of Appeals.

**ANJALI BHAT** is an associate at the Firm's New York office. Ms. Bhat is a graduate of Swarthmore College (B.A., High Honors, 2007) and Columbia Law School (J.D., High Honors, 2011). During law school, Ms. Bhat was a Harlan Fiske Stone Scholar and a finalist in the Harlan Fiske Stone Moot Court Competition. As an undergraduate, she studied history.

Prior to joining the firm, Ms. Bhat clerked for the Honorable William F. Kuntz II of the United States District Court for the Eastern District of New York. In addition to securities class actions, her experience also encompasses real estate litigation in New York state courts. She is admitted to practice in New York and the U.S. District Courts for the Southern and Eastern Districts of New York. She enjoys reading, tennis, and rock climbing.

**JOSEPH G. CLEEMANN** is an associate at the Firm's New York Office. He represents dozens of governmental entities in seven states who are prosecuting pharmaceutical manufacturers and distributors in opioid litigation.

Prior to coming to the Firm, Joe worked eight years at Ropes & Gray, LLP, where he principally represented corporate defendants in government prosecutions, class actions, and complex business litigation. He has extensive experience in the area of data privacy.

Joe is a graduate of Brooklyn Law School, from which he graduated *cum laude* in 2009. He spent his first year out of law school at a Ropes-sponsored fellowship with the Legal Aid

Society's Prisoners' Rights Project. During law school, he interned with the Hon. Robert Sack in the Second Circuit and the Hon. Shira A. Scheindlin in the Southern District of New York.

Joe has additional degrees from Columbia University (M.S., Journalism, 2004) and Harvard University (A.B., History, 1998). Prior to entering the law, he worked seven years in trade book publishing.

**RANDY MOONAN** is an associate in the firm's New York office. Mr. Moonan's practice focuses on securities class actions.

Prior to joining Scott+Scott, Mr. Moonan was a litigation associate at Simpson Thacher & Bartlett LLP, representing major financial institutions in civil and regulatory matters involving securities, antitrust, corporate governance, and insurance law issues.

Mr. Moonan is a graduate of the University at Albany (B.A., History and Political Science, *magna cum laude*, Phi Beta Kappa, 2010) and Cornell Law School (J.D. 2013). During law school, Mr. Moonan served as a Managing Editor of the Cornell Journal of Law and Public Policy.

Mr. Moonan is admitted to practice in New York and the United States District Court for the Southern and Eastern Districts of New York.

**KASSANDRA NELSON** is an associate in the firm's New York office where she focuses on securities and antitrust litigation.

Ms. Nelson is a graduate of the University of Alabama (B.A., *cum laude* 2012) and Southern Methodist University (J.D., 2016). During law school, Ms. Nelson volunteered over 450+ hours in Legal Public Service and received the distinction of Pro Bono Honor Roll upon graduation. She worked as an intern for the Domestic Violence Division at the Dallas County District Attorney's Office as well as an extern for the Honorable Judge Martin Hoffman. Ms. Nelson served as a student attorney for SMU's Innocence Clinic, working with the Dallas County Public Defender's Office and New York Innocence Project, and successfully advocated for the release and exoneration of Steven Chaney, freed after wrongfully serving more than 25 years.

Ms. Nelson is admitted to practice in the State of Texas.

**JONATHAN ZIMMERMAN** is an associate in the New York office where he focuses on shareholder derivative and federal securities litigation.

Mr. Zimmerman is a graduate of McGill University, Desautels School of Management (B.Commerce, 2009) and Temple University, Beasley School of Law (J.D., 2016). While in law school, Mr. Zimmerman served as a Staff Editor on Temple's International and Comparative Law Journal. He also received the Best Paper Award in Advanced Financial Regulations for his work entitled *Corporate Diversions: Short-Term Tax Savings at the Expense of Shareholder Rights* (Spring 2015).

Prior to joining Scott+Scott, Mr. Zimmerman practiced in the areas of shareholder derivative, federal securities, and *Qui Tam* litigation as an Associate at The Weiser Law Firm, located in the suburbs of Philadelphia, Pennsylvania.

Mr. Zimmerman is a member of the New Jersey and Pennsylvania Bars. He is also admitted to the U.S. District Court for the District of New Jersey and the U.S. District Court for the Eastern District of Pennsylvania.

A former two-time All-Canadian collegiate lacrosse player and co-captain of McGill University's men's varsity team, Mr. Zimmerman loves watching and playing sports when he, his wife, and his son are not exploring New York City's vibrant food scene.

**PHILIPPA (PIPPA) WINSTANLEY** is an associate in Scott+Scott Europe LLP's London office. She specialises in competition damages litigation before the English High Court, Competition Appeal Tribunal and the Court of Appeal.

Pippa is currently representing potential claimants in follow-on damage actions against Visa and MasterCard in relation to anti-competitive interchange fees. She is also acting on behalf of clients seeking compensation from participants in a long-running multinational cartel. Pippa also works on general commercial litigation, including a dispute relating to a major property portfolio in the UK.

Prior to joining Scott+Scott Europe LLP, Pippa trained at Marriott Harrison LLP and qualified in commercial litigation at Clyde & Co LLP, where she represented major energy and aviation clients in relation to various debt recovery and breach of contract claims. Pippa has experience representing both corporations and individual shareholders.

Pippa attended the University of Oxford and graduated in 2012 with a Bachelor of Music. Pippa subsequently undertook a Graduate Diploma of Law and LLM in Law at the University of Law, London.

Pippa is admitted to practice in England and Wales.

**RUTH MANSON** is an associate in Scott+Scott Europe LLP's London office.

Ruth specialises in commercial and competition litigation. She is currently working as part of the firm's Antitrust and Competition Practice advising a number of retailers regarding claims against Visa and MasterCard in respect of anti-competitive interchange fees, and working with numerous clients assessing potential claims arising from the manipulation of the foreign exchange market.

Prior to joining Scott+Scott Europe LLP, Ruth completed her traineeship at a major UK law firm in London. During her traineeship, Ruth worked on a number of large scale litigations including a multi-million pound breach of contract claim and acting on behalf of a Part 20 Defendant in the on-going Air Cargo cartel litigation.

Ruth attend the University of Cambridge (Trinity Hall) and graduated in 2015 with a Bachelor of Arts in Law. She subsequently completed her Legal Practice Course, which she passed with distinction, at the University of Westminster.

Ruth is admitted to practice in England and Wales.

**JEFFREY P. JACOBSON** is an associate in the New York office where he focuses on federal securities litigation.

Jeff is a graduate of the George Washington University Law School (J.D., High Honors, Order of the Coif, 2017) and George Washington University (B.A., Journalism & Political Science, *summa cum laude*, Distinguished Scholar, 2013).

Prior to joining Scott+Scott, Jeff was a litigation associate at a major international law firm where he represented clients in securities cases, bankruptcy proceedings, and antitrust matters, and advised clients on employment matters.

Jeff is admitted to practice in the State of New York.

**JUSTIN W. BATTEN** is an associate in the firm's New York office. Mr. Batten's practice focuses on complex and class action litigation with an emphasis on antitrust and consumer protection matters. Prior to joining Scott+Scott, Mr. Batten served as an Assistant Attorney General in the New York Attorney General's Antitrust Bureau.

Mr. Batten is an active member of the New York State Bar Association's Antitrust Section. He serves as the Young Lawyer Liaison to the Antitrust Section's Executive Committee, and is a member of the Donnelly Act Revision Committee.

Mr. Batten is a graduate of New York University School of Law (J.D., 2017) and Georgia State University (B.A. Spanish, *cum laude*, 2012). While at NYU, Mr. Batten served as an intern with the Georgia Attorney General's Office and Texas RioGrande Legal Aid, assisted clients in a clinic with employment law matters, and was a Teaching Assistant to Professor Mark Geistfeld for a first-year torts course. Mr. Batten also served as an articles editor for NYU's *Journal of Law & Liberty*.

Mr. Batten is admitted to practice in New York.

**G. DUSTIN FOSTER**'s main practice areas include antitrust, securities, and complex litigation, which includes such cases as *In Re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-7789 (S.D.N.Y.), *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388 (D. Mass.), and *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co.*, No. 2:12-cv-03824 (E.D. Pa.). Mr. Foster is a member of the West Virginia State Bar.

Mr. Foster is a graduate of West Virginia Wesleyan College (B.S., Biology, *cum laude*, 1999) and of the West Virginia University College of Law (J.D., 2002), where he earned a position on the Moot Court Board and Lugar Trial Association. During law school, Mr. Foster served as a

law clerk for the West Virginia Supreme Court of Appeals, after which he assumed a full-time term position as a law clerk for the Hon. Thomas C. Evans, III, of the Fifth Circuit Court of West Virginia.

**JOSEPH A. PETTIGREW**'s practice areas include securities, antitrust, shareholder derivative litigation, and other complex litigation, including work on the following cases: *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388 (D. Mass.); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y); and *Marvin H. Maurras Revocable Trust v. Bronfman*, 12-cv-3395 (N.D. Ill.).

Mr. Pettigrew graduated from Carleton College (B.A., Art History, *cum laude*, 1998) and from the University of San Diego School of Law (J.D., 2004). Mr. Pettigrew has served on the board and as legal counsel to several nonprofit arts organizations.

Mr. Pettigrew is admitted to practice in California and Maryland.

**JACEY BOGLER** is an attorney in Scott+Scott's California office where she focuses on complex antitrust litigation and class actions.

Jacey graduated, *cum laude*, from Iowa State University with a Bachelor of Arts degree in Psychology and Criminal Justice (minor) in 2010. She graduated with *honors* from Drake University Law School in 2014. While at Drake, Jacey was a junior staff and editorial board member of the Drake Law Review.

Jacey is admitted to practice in the State of Iowa.

**JOEL BOORAS** is a staff attorney in Scott+Scott's California office where he focuses on complex antitrust litigation and class actions.

Mr. Booras received his B.A. from the University of San Diego in 2008, and graduated from the University of San Diego School of Law in 2012.

Prior to joining Scott+Scott, Mr. Booras practiced in the personal injury field and managed cases in the electronic discovery arena for several high-profile technology clients.

Mr. Booras is admitted to practice in the State of California.

**VICTORIA BURKE** is an attorney in Scott+Scott's California office where she focuses on complex antitrust litigation and class actions.

Victoria received her B.A. from Arizona State University in 1997, and graduated from Southwestern Law School in 2011. Additionally, in 2014, Victoria attained a certificate of completion from Loyola Law School's Fashion Law Summer Intensive program.

On behalf of the American Bar Association, Victoria serves as Vice-Chair of the Trademark Transactions Committee, Chair of the Fashion Law Subcommittee, and former Vice-Chair of the

Trademark Litigation Committee. She also frequently authors law articles on a range of topics for various legal publications, most recently for the Daily Journal in November 2016, “*Blunt Talk About Trademarks in the Marijuana Business*.” Victoria has also served as panelist for many programs, such as the ABA’s webinar *Runway Ready: Fashion Law Fundamentals* (2016). Victoria has volunteered her time to Bet Tzedek’s *Employment Rights Project: Wages and Hour* cases and regularly serves as a moot court judge for Pepperdine University School of Law’s Annual National Entertainment Law Moot Court Competition.

Victoria is admitted to practice in the State of California and the District of Columbia, and in several federal courts, including the U.S. District Court for the Central District of California.

**ELIZABETH A. CAMPOS** is an attorney in Scott+Scott’s California office where she focuses on complex antitrust litigation and class actions.

Ms. Campos received her B.A. from the University of Southern California in 1997, and graduated from Thomas Jefferson School of Law in 2001.

Ms. Campos is admitted to practice in the State of California and is registered to practice in front of the U.S. Patent and Trademark Office.

**NGA CUNNINGHAM** is an attorney in Scott+Scott’s California office where she focuses on complex antitrust litigation and class actions.

Nga received her B.A. from the University of California, San Diego in Political Science with an emphasis on Public Policy, and graduated, *cum laude*, from Thomas Jefferson School of Law in 2005.

Nga is admitted to practice in the State of California and in the U.S. District Court for the Central District of California.

**YVONNE FUNK** is an attorney in Scott+Scott’s California office where she focuses on complex antitrust litigation and class actions.

Yvonne received her B.A. from UCLA in 2001, and graduated from UC Hastings law school in 2007. She is admitted to practice in the State of California.

**CARLY HENEK** is an attorney in Scott+Scott’s California office where she focuses on complex antitrust litigation and class actions.

Carly received her B.S. from State University of New York at Albany in Human Biology, and graduated from St. John’s School of Law in 2001.

Carly has extensive state and federal court experience litigating against and representing major U.S. and international corporations and individual clients in all phases of the litigation process. Her practice focuses on complex commercial litigation and securities fraud litigation.

Carly is admitted to practice in the State of California and New York, including all federal courts in California and New York.

**TODD S. HIPPER** is an attorney in Scott+Scott's California office where he focuses on complex antitrust litigation and class actions.

Todd received his B.A. in Political Science from University of California, Berkeley in 1996, and graduated from Georgetown University Law Center in 2001.

Todd is admitted to practice in the States of California and New York, and in several federal courts, including all federal courts in California, and the U.S. District Court for the Eastern District of New York.

**RANDALL AUBREY PETRIE** is an attorney in Scott+Scott's California office where he focuses on complex antitrust litigation and class actions.

Randall received his B.A. from Hamilton College in 1988, and graduated from George Washington University School of Law in 1992, Dean's Fellow.

Randall is admitted to practice in the States of New York and New Jersey and in U.S. District Court for the Southern District of New York.

**MELANIE PORTER** is an attorney in Scott+Scott's California office where she focuses on complex antitrust litigation and class actions.

Melanie graduated from UCLA with a B.A. in Psychology in 2003. She received her J.D. from California Western School of Law in 2006, where she graduated *cum laude* in her concentration. While at CWSL, Melanie served as President of the Asian Pacific Law Student Association and Hawaiian Law Student Association, as well as Secretary and Chair of Community Relations for the Health Law Society and Co-Chair of the Social and Membership Committee for Phi Alpha Delta.

In 2016 and 2017, Melanie received the Rising Star recognition by Super Lawyers. She is currently a member of the California State Bar, San Diego County Bar Association, Consumer Attorneys of San Diego, and the American Bar Association.

She is admitted to practice in the State of California and the U.S. Southern District of California.

**SEAN RUSSELL** is an attorney in Scott+Scott's California office where he focuses on complex antitrust litigation and class actions.

Mr. Russell graduated in 2008 from the University of California, Davis with a Bachelor of Arts in Economics. He received his Juris Doctorate from Thomas Jefferson School of Law in 2015, *cum laude*, where he was Chief Articles Editor of the Thomas Jefferson Law Review and a Moot Court Competitor. While at Thomas Jefferson, Mr. Russell also served as an extern to the Honorable William V. Gallo of the U.S. District Court for the Southern District of California.

Mr. Russell received a Masters of Taxation from the University of San Diego School of Law in 2016.

Mr. Russell is admitted to practice in the State of California and the U.S. District Court for the Southern District of California.

**AMY SIPE** is an attorney in Scott+Scott's California office where she focuses on complex antitrust litigation and class actions.

Ms. Sipe received her B.A. and M.A. from the University of Missouri in Communications, and graduated from the University of Missouri School of Law in Kansas City.

Prior to joining Scott+Scott, Ms. Sipe worked as in-house counsel for a highly diversified Fortune 500 corporation and for an Am Law Top 20 Litigation Firm. Most recently, in addition to antitrust litigation and class actions, Ms. Sipe has focused on best practices in the areas of electronic discovery, information governance, compliance, and risk management.

Ms. Sipe is admitted to practice in the State of Kansas and in the U.S. Court of Appeals for the 10th Circuit.

**BRANDON ZAPF** is an attorney in Scott+Scott's California office where he focuses on complex antitrust litigation and class actions.

Brandon received his B.A. from the University of California, Santa Barbara, in 2002, and graduated from the University of San Francisco School of Law, *cum laude*, in 2007. He received his LL.M. in taxation from the University of San Diego School of Law in 2011.

Brandon is admitted to practice in the State of California and is admitted in the U.S. District Court for the Central District of California.

**CAITLIN ZAPF** is an attorney in Scott+Scott's California office where she focuses on complex antitrust litigation and class actions.

Caitlin received her B.A. from the University of California, San Diego in 2003, and graduated from the University of San Francisco School of Law, *cum laude*, in 2007.

Caitlin is admitted to practice in the State of California and is admitted in the U.S. District Court for the Central, Eastern, and Northern Districts of California.